

# Title 388 WAC

## SOCIAL AND HEALTH SERVICES, DEPARTMENT OF

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### DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

#### Chapter 388-72A COMPREHENSIVE ASSESSMENT REPORTING EVALUATION (CARE) TOOL

388-72A-0005	When do the rules in chapter 388-72A WAC apply to me? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0005, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-72A-0010	Do chapter 388-71 WAC and WAC 388-845-1300 apply to me? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0010, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0010, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-72A-0015	If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0015, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-72A-0020	What is an assessment? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0020, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-005.
388-72A-0025	What is the process for conducting an assessment? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0025, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0065.
388-72A-0030	What is the purpose of an assessment? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0030, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0055.
388-72A-0035	What are personal care services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0035, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0035, filed 2/19/03, effective 3/22/03.] Repealed

- by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0015.
- 388-72A-0036 How are my needs for personal care services determined? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0036, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0075.
- 388-72A-0037 How are self-performance and support provided for the activities of daily living (ADLs) scored? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0037, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0075.
- 388-72A-0038 How are the ADLs bathing, body care, and medication management scored? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0038, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0075.
- 388-72A-0039 How are self-performance and difficulty for the instrumental activities of daily living (IADLs) scored? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0039, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0075.
- 388-72A-0041 How are status and assistance available scored for ADLs and IADLs? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0041, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
- 388-72A-0042 How are ADLs and IADLs scored for children? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090 and 74.39A.095. 04-21-029, § 388-72A-0042, filed 10/13/04, effective 11/13/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0213.
- 388-72A-0043 How are other elements in CARE scored for children age seventeen and younger and foster care clients? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090 and 74.39A.095. 04-21-029, § 388-72A-0043, filed 10/13/04, effective 11/13/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0213.
- 388-72A-0045 How will the department plan to meet my care needs? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0045, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
- 388-72A-0050 What if I disagree with the result of the assessment or the decisions about what services I may receive? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0050, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1305.
- 388-72A-0053 Am I eligible for one of the HCP programs? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-72A-0053, filed 7/26/04, effective 8/26/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, 388-106-0610.
- 388-72A-0055 Am I eligible for COPES-funded services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0055, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0055, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0310.
- 388-72A-0057 Am I eligible for medically needy residential waiver (MNRW)-funded services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-72A-0057, filed 7/26/04, effective 8/26/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0410.
- 388-72A-0058 Am I eligible for medically needy in-home waiver (MNIW)-funded services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-72A-0058, filed 7/26/04, effective 8/26/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0510.
- 388-72A-0060 Am I eligible for MPC-funded services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0060, filed 9/20/04, effective 10/21/04. Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-72A-0060, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-72A-0060, filed 11/19/03, effective 12/20/03. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0060, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0210.
- 388-72A-0065 Am I eligible for Chore-funded services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0065, filed 9/20/04, effective 10/21/04. Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-72A-0065, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0065, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0610.
- 388-72A-0069 How does CARE use the information the assessor gathers? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0069, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0055.
- 388-72A-0070 What are the in-home hours and residential rate based on? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0070, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0070, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0080.
- 388-72A-0080 What criteria does the CARE tool use to place a client in one of the classification groups? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0080, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0080, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0085.
- 388-72A-0081 How is cognitive performance measured in the CARE tool? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0081, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory

	Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0090.		
388-72A-0082	How is clinical complexity measured within the CARE tool? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0082, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0095.		
388-72A-0083	How are mood and behaviors measured within the CARE tool? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0083, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0100.	388-72A-0105	What would cause a change in the maximum hours authorized? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0105, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0140.
388-72A-0084	How are ADL scores measured within the CARE tool? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0084, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0105.	388-72A-0110	How much will the department pay for my care? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0110, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0120.
388-72A-0085	How does the CARE tool evaluate for the two exceptional care classifications of in-home care? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0085, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0085, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0110.	388-72A-0115	When the department adjusts an algorithm, when does the adjustment become effective? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0115, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-72A-0086	How is the information in WAC 388-72A-0081 through 388-72A-0084 used to determine the client's classification payment group for residential settings? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0086, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0115.	388-72A-0120	When a client requests a fair hearing to have the client's CARE tool assessment results reviewed and there is (are) a more recent CARE assessment(s), which CARE tool assessment does the administrative law judge review in the fair hearing? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0120, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1310.
388-72A-0087	How is the information in WAC 388-72A-0081 through 388-72A-0085 used to determine the classification payment group for in-home clients? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0087, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0125.	388-555-1000	Definitions. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1000, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.
388-72A-0090	What are the maximum hours that I can receive for in-home services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0090, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0090, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0135.	388-555-1050	Covered services. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1050, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.
388-72A-0092	How are my in-home hours determined? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0092, filed 9/20/04, effective 10/21/04.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0130.	388-555-1100	Noncovered services. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1100, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.
388-72A-0095	What additional criteria are considered to determine the number of hours I will receive for in-home services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090, and 74.39A.095. 04-19-103, § 388-72A-0095, filed 9/20/04, effective 10/21/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0095, filed 2/19/03, effective 3/22/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0130.	388-555-1150	Eligible providers. [Statutory Authority: RCW 74.08.090. 01-02-075, § 388-555-1150, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1150, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.
388-72A-0100	Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, §	388-555-1200	Provider requirements. [Statutory Authority: RCW 74.08.090. 01-02-075, § 388-555-1200, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1200, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.
		388-555-1250	Coordination of services. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1250, filed 7/10/98, effective 7/10/98.]

	Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.		99-19-104, recodified as § 388-820-040, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-050, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-050, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1190.
388-555-1300	Payment. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1300, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.	388-820-050	Where are residential services provided? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-050, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-050, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-050, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-060, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-060, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1200.
388-555-1350	Payment methodology. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1350, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.		
388-555-1400	Recordkeeping and audits. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1400, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.	388-820-056	Where are crisis diversion services provided? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-056, filed 1/29/04, effective 2/29/04.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-1205.
388-555-1450	Services at federally qualified health clinics. [Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.025, 45 CFR Sec. 80.1 and 80.03; 45 CFR Sec. 605.52; 28 CFR, part 35. 98-15-054, § 388-555-1450, filed 7/10/98, effective 7/10/98.] Repealed by 05-20-049, filed 9/30/05, effective 10/31/05. Statutory Authority: RCW 74.08.090, 39.29.040, 43.19.190.	388-820-060	Who may receive residential services? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-060, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-060, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-060, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-070, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-070, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1210.
<b>Chapter 388-820</b>			
<b>COMMUNITY RESIDENTIAL SERVICES AND SUPPORT</b>			
388-820-010	What is the purpose of this chapter? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-010, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-010, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapters 18.88A and 71A.12 RCW. 96-10-076 (Order 3978), § 275-26-010, filed 5/1/96, effective 6/1/96. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-010, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-010, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1010.	388-820-070	What physical and safety requirements exist for residential services? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-070, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-070, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-070, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-072, filed 8/9/91, effective 9/9/91.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1220.
388-820-020	What definitions apply to this chapter? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-020, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-020, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-020, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-020, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-020, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 86-08-003 (Order 2349), § 275-26-020, filed 3/20/86; 83-05-017 (Order 1945), § 275-26-020, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1020.	388-820-076	How must service providers assist clients in regulating water temperature? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-076, filed 1/29/04, effective 2/29/04.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1230.
388-820-030	What are residential services? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-030, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-030, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-030, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-022, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. 90-04-074 (Order 2997), § 275-26-022, filed 2/5/90, effective 3/1/90. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-022, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1180.	388-820-086	What are crisis diversion services? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-086, filed 1/29/04, effective 2/29/04.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1250.
		388-820-090	What are group homes? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-090, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-090, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-090, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-090, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapters 18.88A and 71A.12 RCW. 96-10-076 (Order 3978), § 275-26-076, filed 5/1/96, effective 6/1/96.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1260.
388-820-040	Who certifies residential services? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-040, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-040, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-040, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-022, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. 90-04-074 (Order 2997), § 275-26-022, filed 2/5/90, effective 3/1/90. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-022, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1180.	388-820-100	When must a service provider document a client's refusal to participate in services? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-100, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-100, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-100, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-076, filed 5/1/96, effective 6/1/96.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1260.



	RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-100, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-100, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-100, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-087, filed 8/9/91, effective 9/9/91.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1400.	388-820-200	How often are reviews and evaluations done for service providers? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-200, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-200, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1510.
388-820-110	May a service provider offer services to nonclients in the same household as clients? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-110, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-110, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-097, filed 2/9/83.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1410.	388-820-210	What occurs during review and evaluation? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-210, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-210, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1520.
388-820-120	Who pays for a client's residential services? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-120, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-120, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-107, filed 8/9/91, effective 9/9/91.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1420.	388-820-220	May service providers disagree with evaluation findings? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-220, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-220, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1530.
388-820-130	When may a service provider receive initial set-up funds from DSHS? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-130, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-130, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-115, filed 8/9/91, effective 9/9/91.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1430.	388-820-230	May a service provider receive provisional certification? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-230, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-230, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-230, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1540.
388-820-140	What are the different types of certification? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-140, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-140, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1440.	388-820-240	When may RCS decertify a service provider? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-240, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-240, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1550.
388-820-150	When may RCS grant initial certification to an agency? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-150, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-150, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1460.	388-820-250	What are administrators of service providers required to do? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-250, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-250, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1600.
388-820-160	How does an agency apply for initial certification? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-160, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-160, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1470.	388-820-260	What type of administrative documents are service providers required to have? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-260, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-260, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-260, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1610.
388-820-170	What happens after an agency receives initial certification? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-170, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1480.	388-820-270	What are the requirements for personnel policies? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-270, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1620.
388-820-180	May initial certification be extended for a service provider? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-180, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-180, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1490.	388-820-280	What nondiscrimination requirements must agencies and service providers meet? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-280, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1630.
388-820-190	How does a service provider receive regular certification? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-190, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-190, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1500.	388-820-290	What staffing requirements must service providers meet? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-290, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-290, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-290, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1640.
		388-820-300	May clients instruct and support other clients? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12

	RCW. 04-04-043, § 388-820-300, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-300, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1650.		RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-405, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-405, filed 1/29/04, effective 2/29/04.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1760.
388-820-310	Who needs background checks? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-04-043, § 388-820-310, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-310, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1660.	388-820-410	Do service providers need to keep client's property records? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-410, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-410, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1770.
388-820-320	What are the minimum requirements for staff employed by service providers? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-320, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-320, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1670.	388-820-420	Are there requirements for record entries? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-420, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1780.
388-820-330	What staff training is required? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-330, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-330, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-330, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1680.	388-820-430	Who must service providers notify in emergencies? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-430, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-430, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1790.
388-820-340	How often must performance reviews be conducted for staff of service providers? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-340, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-340, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1690.	388-820-440	What abuse and neglect reporting requirements must service providers meet? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-440, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-440, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1800.
388-820-350	When must service providers have staff-coverage schedules approved by DDD? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-350, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-350, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1700.	388-820-450	What are client services? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-450, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1810.
388-820-360	What happens when a service provider's ownership changes? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-360, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-360, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1710.	388-820-460	What health and safety support may a service provider offer to a client? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-460, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1820.
388-820-370	When may a client's service provider change? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-370, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1720.	388-820-470	What support may a service provider offer to a client to increase personal power and choices? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-470, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1830.
388-820-380	Are clients' records considered confidential? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-380, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1730.	388-820-480	How may service providers assist clients in gaining positive recognition? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-480, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1840.
388-820-390	How long does a service provider need to keep client records? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-390, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1740.	388-820-490	What support may a service provider offer to increase the positive relationships in the client's life? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-490, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1850.
388-820-400	What information do service providers need to keep in client records? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-400, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-400, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-400, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1750.	388-820-500	How may a service provider assist clients with becoming integrated into their community? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-500, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1860.
388-820-405	What information do crisis diversion service providers need to keep in client records? [Statutory Authority:	388-820-510	What is an individual service plan/plan of care (ISP/POC) for clients? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-510, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-510, filed 10/26/01, effective 1/1/02.] Decodedified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1870.

388-820-530	Who is responsible for completing and overseeing a client's ISP/POC? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-530, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-530, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1880.	388-820-640	How does a service provider manage client funds? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-640, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2090.
388-820-540	Who may participate in creating a client's ISP/POC? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-540, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-540, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1890.	388-820-650	What documentation must service providers keep to protect a client's financial interests? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-650, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-650, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-650, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2100.
388-820-550	How often must the ISP/POC be reviewed? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-550, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-550, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-550, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-1900.	388-820-660	How are a client's funds transferred when they are managed by a service provider? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-660, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2110.
388-820-555	What plans must crisis diversion service providers develop? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-555, filed 1/29/04, effective 2/29/04.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2000.	388-820-670	How does a service provider handle loans to a client? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-670, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2120.
388-820-560	What is an individual instruction and support plan (IISP) for clients? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-560, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-560, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-560, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2010.	388-820-680	When must a service provider pay a client? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-680, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2130.
388-820-570	Who may participate in developing the IISP for each client? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-570, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2020.	388-820-690	What must service providers do to support a client's health? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-690, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-690, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2140.
388-820-580	Who oversees the IISP for each client? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-580, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2030.	388-820-700	May a client refuse health care services? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-700, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2150.
388-820-590	May a service provider manage a client's funds? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-590, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2040.	388-820-710	When may client funds be used for health services? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-710, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2160.
388-820-600	May a service provider hold bankbooks and bankcards for a client? [Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-600, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-600, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2050.	388-820-720	How must the service provider be involved with a client's transportation needs? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-720, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-720, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2300.
388-820-610	May a service provider combine agency and client funds? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-610, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2060.	388-820-730	Who may delegate nursing care tasks? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-730, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2400.
388-820-620	Does the service provider need to develop an individual financial plan (IFP) for clients? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-620, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2070.	388-820-740	What training is required before staff are qualified to perform delegated tasks? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-740, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2310.
388-820-630	What information must the IFP include? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-630, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-630, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2080.	388-820-750	Do nursing assistants need to comply with department of health requirements? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-750, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2320.
		388-820-760	Who is authorized to provide consent for a client's receiving health care? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-760, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2430.
		388-820-770	What rights do nursing assistants have concerning the delegation of nursing care tasks? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-770, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138,

- 388-820-780 filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2440.  
Are nursing assistants liable for errors while doing nursing care tasks? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-780, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2450.
- 388-820-790 What happens if unqualified staff do a nursing task? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-790, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2460.
- 388-820-800 What technical assistance may service providers get from DSHS for nurse delegation requirements? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-800, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2470.
- 388-820-810 What happens when DSHS finds a service provider in violation of nurse delegation requirements? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-810, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2480.
- 388-820-820 May a service provider have a chance to correct violations before being fined? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-820, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2490.
- 388-820-830 May civil fines be imposed during technical assistance visits? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-830, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2500.
- 388-820-840 How does DSHS impose a civil fine? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-840, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2510.
- 388-820-850 When is payment due for a civil fine? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-850, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2520.
- 388-820-860 May a service provider disagree with DSHS findings of a violation? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-860, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2530.
- 388-820-870 May a service provider contest a civil fine? [Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-870, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2540.
- 388-820-880 May an agency or service provider contest a RCS decision? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-880, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-880, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2330.
- 388-820-890 When does an administrative review conference occur? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-890, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-890, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2340.
- 388-820-900 May an administrative review conference be conducted by telephone? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-900, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-900, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2350.
- 388-820-910 What happens during the administrative review conference? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-910, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-

910, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2360.

- 388-820-920 May an agency or service provider contest the decision from the administrative review conference? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-920, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-920, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2370.

- 388-820-930 Does RCS make exceptions to the requirements in this chapter? [Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-930, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-930, filed 10/26/01, effective 1/1/02.] Decodified by 05-05-077, filed 2/15/05, effective 2/15/05. Recodified as WAC 388-101-2380.

## Chapter 388-02 WAC

### DSHS HEARING RULES

(Formerly chapter 388-08 WAC)

#### WAC

- 388-02-0025 Where is the office of administrative hearings located?

**WAC 388-02-0025 Where is the office of administrative hearings located?** (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings  
2420 Bristol Court SW, 1st Floor  
P.O. Box 42488  
Olympia WA 98504-2488  
(360) 664-8717  
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

**Olympia**  
Office of Administrative Hearings  
2420 Bristol Court SW, 3rd Floor  
PO Box 42489  
Olympia, WA 98504-2489  
(360) 753-2531  
1-800-583-8271  
fax: (360) 586-6563

**Seattle**  
Office of Administrative Hearings  
1904 3rd Ave., Suite 722  
Seattle, WA 98101-1100  
(206) 464-6322  
1-800-583-8270  
fax: (206) 587-5136

**Everett**  
Office of Administrative Hearings  
2722 Colby, Suite 610  
Everett, WA 98201-3571  
(425) 339-1921  
1-800-583-8261  
fax: (425) 339-3907

**Vancouver**

Office of Administrative Hearings  
5300 MacArthur Blvd., Suite 100  
Vancouver, WA 98661  
(360) 690-7189  
1-800-243-3451  
fax: (360) 696-6255

**Spokane**

Office of Administrative Hearings  
Old City Hall Building, 5th Floor  
221 N. Wall Street, Suite 540  
Spokane, WA 99201  
(509) 456-3975  
1-800-366-0955  
fax: (509) 456-3997

**Yakima**

Office of Administrative Hearings  
32 N 3rd Street, Suite 320  
Yakima, WA 98901-2730  
(509) 575-2147  
1-800-843-3491  
fax (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: [www.oah.wa.gov](http://www.oah.wa.gov)

[Statutory Authority: RCW 34.05.020 and chapter 34.05 RCW, Parts IV and V. 05-22-076, § 388-02-0025, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. 02-21-061, § 388-02-0025, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. 00-18-059, § 388-02-0025, filed 9/1/00, effective 10/2/00.]

**Chapter 388-14A WAC****DIVISION OF CHILD SUPPORT RULES****WAC**

388-14A-1020	What definitions apply to the rules regarding child support enforcement?
388-14A-3102	When the parents have signed an acknowledgment or affidavit of paternity, which support establishment notice does the division of child support serve on the noncustodial parent?
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388-14A-3304	The division of child support serves a notice of support debt when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support.
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	child support send a national medical support notice to the employer?
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388-14A-6300	Duty of the administrative law judge in a hearing to determine the amount of a support obligation.
388-14A-7100	An order from another state may be registered in Washington for enforcement or modification.
388-14A-7110	The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state.
388-14A-7115	Are there special rules for a hearing on a notice seeking to assess and collect interest on a support order?
388-14A-7117	Are there special rules for a conference board on a notice seeking to assess and collect interest on a support order?
388-14A-7120	When does DCS update the interest assessed on a case?
388-14A-8100	Are there special rules for setting child support for children in foster care?
388-14A-8600	Does the division of child support enforce interest on unpaid support arrears?

**WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?** For purposes of this chapter, the following definitions apply:

**"Absence of a court order"** means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

**"Absent parent"** is a term used for a noncustodial parent.

**"Accessible coverage"** means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

**"Accrued debt"** means past-due child support which has not been paid.

**"Administrative order"** means a determination, finding, decree or order for support issued under RCW 74.20A.-055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

**"Agency"** means the Title IV-D provider of a state. In Washington, this is DCS.

**"Agreed settlement"** is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settle-

ment does not require the approval of an administrative law judge.

**"Aid"** or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid for families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

**"Alternate recipient"** means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

**"Applicant/custodian"** means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

**"Applicant/recipient," "applicant,"** and **"recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

**"Arrears"** means the debt amount owed for a period of time before the current month.

**"Assistance"** means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

**"Birth costs"** means medical expenses incurred by the custodial parent or the state for the birth of a child.

**"Conference board"** means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

**"Consent order"** means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

**"Court order"** means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

**"Current support"** or **"current and future support"** means the amount of child support which is owed for each month.

**"Custodial parent"** means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

**"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought"** means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

**"Delinquency"** means failure to pay current child support when due.

**"Department"** means the Washington state department of social and health services (DSHS).

**"Dependent child"** means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists

if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

**"Disposable earnings"** means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

**"Earnings"** means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

**"Employee"** means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

**"Employer"** means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

**"Employment"** means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

**"Family"** means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

**"Family member"** means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

**"Foreign order"** means a court or administrative order entered by a tribunal other than one in the state of Washington.

**"Foster care case"** means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

**"Fraud,"** for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

- (a) Reliance on the truth of the representation;
- (b) Right to rely on it; and
- (c) Subsequent damage.

**"Full support enforcement services"** means the entire range of services available in a Title IV-D case.

**"Good cause"** for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

**"Head of household"** means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

**"Health care costs":**

(1) For the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, means medical, dental and optometrical expenses; and

(2) For the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical, dental and optometrical costs stated as a fixed dollar amount by a support order.

**"Health insurance"** means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

**"Hearing"** means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

**"I/me"** means the person asking the question which appears as the title of a rule.

**"Income" includes:**

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

**"Income withholding action"** includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

**"Locate"** can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

**"Medical support"** means either or both:

- (1) Health care costs stated as a fixed dollar amount in a support order; and
- (2) Health insurance coverage for a dependent child.

**"National Medical Support Notice"** or **"NMSN"** is a federally-mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

**"Noncustodial parent"** means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. Also called the NCP. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

**"Other ordinary expense"** means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

**"Participant"** means an employee or retiree who is eligible for coverage under an employer group health plan.

**"Past support"** means support arrears.

**"Paternity testing"** means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

**"Payment services only"** or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

**"Permanently assigned arrearages"** means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

**"Physical custodian"** means custodial parent (CP).

**"Plan administrator"** means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

**"Putative father"** includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

**"Reasonable efforts to locate"** means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
  - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;



(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

**"Required support obligation for the current month"**

means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

**"Resident"** means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

**"Residential care"** means foster care, either state or federally funded.

**"Residential parent"** means the custodial parent (CP), or the person with whom the child resides that majority of the time.

**"Responsible parent"** is a term sometimes used for a noncustodial parent.

**"Responsible stepparent"** means a stepparent who has established an in loco parentis relationship with the dependent child.

**"Retained support"** means a debt owed to the division of child support by anyone other than a noncustodial parent.

**"Satisfaction of judgment"** means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

**"Secretary"** means the secretary of the department of social and health services or the secretary's designee.

**"State"** means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

**"Superior court order"** means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

**"Support debt"** means support which was due under a support order but has not been paid. This includes:

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including health care costs, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

**"Support enforcement services"** means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

**"Support establishment notice"** means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

**"Support money"** means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, medical support, or birth costs.

**"Support obligation"** means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, health care costs, birth costs, and child care or special child rearing expenses.

**"Temporarily assigned arrearages"** means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997.

**"Title IV-A"** means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

**"Title IV-A agency"** means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

**"Title IV-D"** means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

**"Title IV-D agency"** or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

**"Title IV-D case"** is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

**"Title IV-D plan"** means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

**"Title IV-E"** means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

**"Title IV-E case"** means a foster care case.

**"Tribunal"** means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

**"Unreimbursed assistance"** means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

**"We"** means the division of child support, part of the department of social and health services of the state of Washington.

**"WSSR"** is the Washington state support registry.

**"You"** means the reader of the rules, a member of the public, or a recipient of support enforcement services.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.-056, 74.20A.310. 05-14-101, § 388-14A-1020, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 74.08.090, 74.20A.310, and 26.18.170, 42 U.S.C. 666 (a)(19), Child Support Performance and Incentives Act of

1998, 45 C.F.R. 303.31, and 45 C.F.R. 303.32. 04-17-119, § 388-14A-1020, filed 8/17/04, effective 9/17/04. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.055, 74.20A.056, 01-03-089, § 388-14A-1020, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-011 and 388-14-020.]

**WAC 388-14A-3102 When the parents have signed an acknowledgment or affidavit of paternity, which support establishment notice does the division of child support serve on the noncustodial parent?** (1) When the parents of a child are not married, they may sign an affidavit of paternity, also called an acknowledgment of paternity. The legal effect of the affidavit or acknowledgment depends on when it is filed, in what state it is filed, and whether both parents were over age eighteen when the affidavit was signed.

(2) For affidavits or acknowledgments filed on or before July 1, 1997 with the center for health statistics in the state of Washington, the division of child support (DCS) serves a notice and finding of parental responsibility (NFRP). See WAC 388-14A-3120.

(3) For affidavits or acknowledgments filed after July 1, 1997 with the center for health statistics in the state of Washington, DCS serves a notice and finding of financial responsibility (NFRP) under WAC 388-14A-3115, because the affidavit or acknowledgment has become a conclusive presumption of paternity under RCW 26.26.320.

(4) For acknowledgments or affidavits filed with the vital records agency of another state, DCS determines whether to serve a NFRP or NFPR depending on the laws of the state where the affidavit is filed.

(5) DCS relies on the acknowledgment or affidavit, even if the mother or father were not yet eighteen years of age at the time they signed or filed the acknowledgment or affidavit, as provided in RCW 26.26.315(4).

(6) If the mother was married at the time of the child's birth, but not to the man acknowledging paternity, the man to whom she was married must also have signed and filed a denial of paternity within ten days of the child's birth.

(7) If the acknowledgment or affidavit is legally deficient in any way, DCS may refer the case for paternity establishment in the superior court.

(8) If the mother is the noncustodial parent, DCS serves a NFRP.

[Statutory Authority: RCW 26.26.315, 26.26.320, 26.26.330, 26.26.335, 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 74.20A.310. 05-12-136, § 388-14A-3102, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3102, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3102, filed 7/10/00 and 9/25/00, effective 11/6/00.]

**WAC 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity.** (1) A notice and finding of parental responsibility (NFRP) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFRP) (see WAC 388-14A-3115)

because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before July 1, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the noncustodial parent and the custodial parent that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFPR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes the noncustodial parent's health insurance obligation, pursuant to RCW 26.18.170 and 26.23.050.

(8) The NFPR may include an obligation to provide support for day care expenses or special child-rearing expenses, pursuant to chapter 26.19 RCW.

(9) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the noncustodial parent hid or left the state of Washington for the purpose of avoiding service.

(10) After service of the NFPR, the noncustodial parent and the custodial parent must notify DCS of any change of address, or of any changes that may affect the support obligation.

(11) The noncustodial parent must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

(12) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

(13) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

(14) Either the noncustodial parent, or the mother, if she is also the custodial parent, may request genetic tests. A mother who is not the custodial parent may at any time request that DCS refer the case for paternity establishment in the superior court.

(15) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the noncustodial parent is later:

- (a) Excluded from being the father by genetic tests; or
- (b) Found not to be the father by a court of competent jurisdiction.

(16) If the noncustodial parent requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

- (a) A hearing on the NFPR.
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

(17) If the noncustodial parent was not excluded as the father, the mother, if she is also the custodial parent, may within twenty days of the date of service of the genetic tests request:

- (a) A hearing on the NFPR; or
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

(18) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

(19) A hearing on a NFPR is for the limited purpose of resolving the accrued support debt, current support obligation and reimbursement to DCS for paternity-related costs. The NCP has the burden of proving any defenses to liability.

[Statutory Authority: RCW 26.26.315, 26.26.320, 26.26.330, 26.26.335, 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 74.20A.310. 05-12-136, § 388-14A-3120, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3120, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3120, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-290.]

**WAC 388-14A-3304 The division of child support serves a notice of support debt when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support.** (1) The division of child support (DCS) may serve a notice of support debt on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support. A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(2) DCS serves a notice of support debt like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any

other party after service of a notice of support debt except as provided in WAC 388-14A-3375.

(5) A notice of support debt becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) A notice of support debt served in another state becomes final according to WAC 388-14A-7200.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection (9) of this section, DCS must:

(a) Stay enforcement of the notice of support debt except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection (8) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt must fully and fairly inform the NCP of the rights and responsibilities in this section.

(14) A notice of support debt that does not include interest does not relieve the NCP of any interest that may have

accrued or may accrue under the support order covered by the notice.

(15) A notice of support debt that does include interest deals only the amount of debt, including interest, that is due and owing for the indicated time periods. Such a notice does not relieve the NCP of any interest that may have accrued or may accrue for any other time periods.

[Statutory Authority: RCW 26.21.016, 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310, 26.23.110, and 74.20A.040. 05-07-059, § 388-14A-3304, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310. 01-03-089, § 388-14A-3304, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-435.]

**WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order.** (1) The division of child support (DCS) may serve a notice of support owed on a noncustodial parent (NCP) under RCW 26.23.110 to establish a fixed dollar amount of monthly support and accrued support debt:

(a) If a support obligation under a court order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of the court order.

(2) The notice of support owed may include day care costs and medical support if the court order provides for such costs.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(9) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

(10) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(11) If an NCP or custodial parent (CP) requests a late hearing, the party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

(12) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.

(13) For the purposes of this section, WAC 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian" or "custodial parent."

[Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310 and 26.23.110, and 74.20A.040. 05-07-059, § 388-14A-3310, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310. 01-03-089, § 388-14A-3310, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-415.]

**WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?** (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.

(5) DCS may request an annual review of the support order but has no duty to do so.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

[Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.-310, 26.23.110, and 74.20A.040. 05-07-059, § 388-14A-3317, filed 3/11/05, effective 4/11/05.]

**WAC 388-14A-3320 What happens at a hearing on a notice of support owed?** (1) A hearing on a notice of support owed is only for interpreting the court order for support and any modifying orders and not for changing or deferring the support provisions of the order. The hearing is only to determine:

- (a) The amount of monthly support as a fixed dollar amount;
- (b) Any accrued arrears through the date of hearing; and
- (c) If a condition precedent in the court order to begin or adjust the support obligation was met.

(2) Either the noncustodial parent (NCP) or custodial parent (CP) may request a hearing on a notice of support owed. The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(3) The office of administrative hearings (OAH) sends a notice of hearing to the noncustodial parent (NCP), to the division of child support (DCS), and to the payee. The NCP and the payee each may participate in the hearing as an independent party.

(4) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the payee appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(5) If the payee requests a late hearing on a notice of support owed, the payee must show good cause for filing the late hearing request.

[Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310, 26.23.110, and 74.20A.040. 05-07-059, § 388-14A-3320, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 74.08.090. 01-03-089, § 388-14A-3320, filed 1/17/01, effective 2/17/01.]

**WAC 388-14A-3321 What happens if the custodial parent requests a hearing on a notice of support debt and demand for payment?** (1) If the custodial parent (CP) requests a hearing on a notice of support debt and demand for payment (also called the "notice of support debt"), the hearing is for the limited purpose of determining the support debt under the order through the date of the hearing.

(2) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the payee.

(a) The NCP and the payee each may participate in the hearing.

(b) "Participating in" or "proceeding with" the hearing may include signing a consent order or agreed settlement under WAC 388-14A-3600.

(3) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the payee appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(4) If the payee requests a late hearing on a notice of support debt, the payee must show good cause for filing the late hearing request.

(5) When DCS uses a notice of support debt to assess and collect interest on an out-of-state support order, see WAC 388-14A-7110.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

[Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.-310, 26.23.110, and 74.20A.040. 05-07-059, § 388-14A-3321, filed 3/11/05, effective 4/11/05.]

**WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?** (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date:

(a) DCS receives the application for nonassistance services if the CP applies directly to DCS for services; or

(b) Another state or Indian tribe received the application for nonassistance services or the actual date the other state or tribe requests that child support start, whichever is later, if the other state or Indian tribe requests DCS to establish a support order.

(2) This section does not limit in any way the right of the court to order payment for back support as provided in RCW 26.26.130 and 26.26.134 if the case requires paternity establishment.

(3) When another state or an Indian tribe is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the other state or tribe.

(4) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

(5) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance

payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

(6) The limitation in subsection (5) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or

(ii) Is not the subject of a presumption under RCW 26.26.320.

(7) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

[Statutory Authority: RCW 74.08.090, 74.20A.055, and 74.20A.310. 05-14-099, § 388-14A-3350, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 74.20A.055. 03-20-072, § 388-14A-3350, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 74.20A.055. 01-03-089, § 388-14A-3350, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-045.]

**WAC 388-14A-3600 The parties may resolve any child support case by entering a consent order or an agreed settlement.** (1) The division of child support (DCS) may enter a consent order or agreed settlement to finalize any dispute in which a party requests a hearing. DCS attempts to settle matters through agreement when possible.

(a) An agreed settlement is signed only by the parties to the dispute.

(b) A consent order must be signed by the parties and by an administrative law judge (ALJ) provided that:

(i) In a telephone hearing, the ALJ may sign on behalf of any party if that party gives their consent on the record; and

(ii) The ALJ approves a consent order without requiring testimony or a hearing, unless entry of the order would be unlawful.

(2) An agreed settlement or consent order is final and enforceable on:

(a) The date the last party signs the agreed settlement, if all parties signed the agreed settlement;

(b) The date the ALJ signs the consent order; or

(c) If the ALJ defaults one of the parties to the proceeding, the latest of the following dates:

(i) The date the ALJ signed the consent order;

(ii) The date the last party signed the agreed settlement; or

(iii) The date the order of default is final. See WAC 388-14A-6110 and 388-14A-6115 to determine whether the ALJ issues an initial order or a final order.

(3) A party to a consent order or an agreed settlement may:

(a) Not petition for review of the settlement or order under WAC 388-02-0560;

(b) Petition for modification under WAC 388-14A-3925; and

(c) Petition to vacate the settlement or consent order under WAC 388-14A-3700. However, the ALJ may only vacate a settlement or consent order after making a finding of fraud by a party, or on any other basis that would result in manifest injustice.

(4) If a hearing has been scheduled, DCS files a copy of the agreed settlement or consent order with the office of administrative hearings (OAH), and OAH issues an order dismissing the hearing. There are no hearing rights on the order dismissing the hearing.

(5) An agreed settlement or consent order entered under this section must comply with the requirements of WAC 388-14A-6300 if the dispute concerns a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition to determine the amount of a support obligation.

[Statutory Authority: RCW 26.23.050, 34.05.220, 74.08.090, 74.20A.310. 05-14-102, § 388-14A-3600, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3600, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 74.08.090, 34.05.220(1). 01-24-082, § 388-14A-3600, filed 12/3/01, effective 1/3/02. Statutory Authority: RCW 74.08.090, 34.05.220(1), 74.20A.055, 74.20A.056. 01-03-089, § 388-14A-3600, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-150 and 388-11-430.]

**WAC 388-14A-3810 Once a child support order is entered how long does the support obligation last?** (1) A noncustodial parent's obligation to pay support under an administrative order continues until:

(a) A superior or tribal court order supersedes the order;

(b) The order is modified under WAC 388-14A-3925;

(c) The child reaches eighteen years of age;

(d) The child is emancipated;

(e) The child marries;

(f) The child becomes a member of the United States armed forces;

(g) The child or the responsible parent die;

(h) A responsible stepparent's marriage is dissolved;

(i) The parties to the order marry or remarry, as provided in WAC 388-14A-3100(3); or

(j) A superior court order terminates the responsible parent's liability as provided under RCW 26.16.205.

(2) As an exception to the above rule, a noncustodial parent's obligation to pay support under an administrative order continues for a dependent child over the age of eighteen if the child is under age nineteen, and participating full-time in a secondary school program or the same level of vocational or technical training, as defined in WAC 388-404-0005 (1)(b). However, if the child has already met the requirements to finish the educational program, the child is no longer considered to be dependent.

(3) A noncustodial parent's obligation to pay support under an administrative order may be temporarily suspended when the:

(a) Noncustodial parent (NCP) resides with the child for whom support is sought for purposes other than visitation;

(b) NCP reconciles with the child and the custodial parent; or

(c) Child returns to the residence of the NCP from a foster care placement, for purposes other than visitation.

(4) When the NCP's obligation to pay current support on a case is suspended under subsection (3) of this section, the division of child support (DCS) informs the NCP that the obligation is suspended, in writing, sent by regular mail to the NCP's last known address.

(5) If circumstances causing an NCP's support obligation to be temporarily suspended change, the support obligation resumes. DCS sends the NCP a notice that the obligation to make current support payments has resumed.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 74.20A.310, 05-14-101, § 388-14A-3810, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199, 03-17-013, § 388-14A-3810, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 74.08.090, 01-03-089, § 388-14A-3810, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-155.]

**WAC 388-14A-4119 How soon after a noncustodial parent is listed in the state directory of new hires must the division of child support send a national medical support notice to the employer?** The division of child support (DCS) must send a national medical support notice (NMSN) to the employer of a noncustodial parent (NCP) within two business days of the date the NCP's information is entered into the state directory of new hires (SDNH).

[Statutory Authority: RCW 74.20A.310 and 45 C.F.R. 303.32, 45 C.F.R. 303.30, 45 C.F.R. 303.31, 05-08-060, § 388-14A-4119, filed 3/31/05, effective 5/1/05.]

**WAC 388-14A-4180 When must the division of child support communicate with the DSHS medical assistance administration?** (1) The division of child support (DCS) must inform the DSHS medical assistance administration (MAA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. MAA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide MAA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, Medicaid number or the individual's Social Security number;

(b) Name of the noncustodial parent (NCP);

(c) Social Security number of the NCP;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the NCP;

(f) Name and address of the NCP's employer;

(g) Information regarding the NCP's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with MAA to determine if there have been any lapses (stops and starts) in the NCP's health insurance coverage for Medicaid applicants.

[Statutory Authority: RCW 74.20A.310 and 45 C.F.R. 303.32, 45 C.F.R. 303.30, 45 C.F.R. 303.31, 05-08-060, § 388-14A-4180, filed 3/31/05, effective 5/1/05.]

**WAC 388-14A-4304 What happens if the judge determines that I have paid too much for day care and special expenses?** (1) If at a hearing under WAC 388-14A-4303, the administrative law judge (ALJ) decides that the custodial parent (CP) has not incurred costs in the amount paid by the noncustodial parent (NCP), any ordered overpayment reimbursement may be applied as an offset to any non-assistance child support arrears owed by the NCP on that case only. If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(a) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(b) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order; or

(c) With the consent of the CP, in the form of a direct reimbursement by the CP to the NCP.

(2) The NCP may not pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments unless:

(a) Specifically agreed to by the CP; and

(b) Specifically agreed to in writing by DCS for periods when the CP or the dependent child receives public assistance.

[Statutory Authority: RCW 26.19.080, 34.05.220, 74.08.090, 74.20A.310, 05-07-087, § 388-14A-4304, filed 3/16/05, effective 4/16/05. Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310, 01-03-089, § 388-14A-4304, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

**WAC 388-14A-5000 How does the division of child support distribute support payments?** (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services; or

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP).

(3) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act.



(4) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(5) DCS changes the distribution rules based on changes in federal statutes and regulations.

[Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.310, and 45 C.F.R. 303.72 (h)(5). 05-06-014, § 388-14A-5000, filed 2/22/05, effective 3/25/05. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 74.20A.057, 74.20A.310. 03-20-072, § 388-14A-5000, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. 01-03-089, § 388-14A-5000, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-250, 388-14-270, and 388-14-273.]

**WAC 388-14A-5001 What procedures does DCS follow to distribute support payments?** When distributing support money, the division of child support (DCS) does the following:

(1) Records payments in exact amounts of dollars and cents;

(2) Distributes support money within two days of the date DCS receives the money, unless DCS is unable to distribute the payment for one or more of the following reasons:

(a) The location of the payee is unknown;

(b) DCS does not have sufficient information to identify the accounts against which or to which it should apply the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether support money is owed or how DCS should distribute the money.

(d) DCS receives prepaid support money and is holding for distribution in future months under subsection (2)(e) of this section;

(e) DCS mails a notice of intent to distribute support money to the custodial parent (CP) under WAC 388-14A-5050;

(f) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the payment, but may delay disbursement of that amount until a future payment is received which increases the amount of the payment to the family to at least one dollar. If no future payments are received which increase the payment to the family of at least one dollar, DCS transfers the amount to the department of revenue under RCW 63.29.130. This subsection does not apply to disbursements which can be made by electronic funds transfer (EFT), or to refunds of intercepted federal income tax refunds; or

(g) Other circumstances exist which make a proper and timely distribution of the money impossible through no fault or lack of diligence of DCS.

(3) Distribute support money based on the date DCS receives the money, except as provided under WAC 388-14A-5005. DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP).

[Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.310, and 45 C.F.R. 303.72 (h)(5). 05-06-014, § 388-14A-5001, filed 2/22/05, effective 3/25/05. Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.188, 74.20A.310, 42 U.S.C. 666(a)14. 01-24-078, § 388-14A-5001, filed 12/3/01, effective 1/3/02. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. 01-03-089, § 388-14A-5001, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-270 and 388-14-273.]

**WAC 388-14A-5005 How does DCS distribute intercepted federal income tax refunds?** (1) The division of child support (DCS) applies intercepted federal income tax refunds in accordance with 42 U.S.C. Sec. 657, as follows:

(a) First, to support debts which are permanently assigned to the department to reimburse public assistance payments; and

(b) Second, to support debts which are temporarily assigned to the department to reimburse public assistance payments; and

(c) Third, to support debts that are not assigned to the department; and

(d) To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP).

(3) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a payment on behalf of an NCP is from an intercepted refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

[Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.310, and 45 C.F.R. 303.72 (h)(5). 05-06-014, § 388-14A-5005, filed 2/22/05, effective 3/25/05. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. 01-03-089, § 388-14A-5005, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-270.]

**WAC 388-14A-5008 Can the noncustodial parent prepay support?** (1) If the division of child support (DCS) receives or collects support money representing payment on the required support obligation for future months, DCS must:

(a) Apply the support money to future months only if the support debt is paid in full;

(b) Distribute the support money on a monthly basis when payments become due in the future; and

(c) Mail a notice to the last known address of the person entitled to receive support money.

(2) The notice in subsection (1)(c) above informs the person entitled to receive support money that:

(a) DCS received prepaid support money;

(b) DCS intends to distribute the prepaid money as support payments become due in the future; and

(c) The person may request a conference board under WAC 388-14A-6400 to determine if DCS should immediately distribute the prepaid support money.

(d) DCS does not mail the notice referred to in subsection (1)(c) of this section if the prepaid support is equal to or less than one month's support obligation.

[Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.310, and 45 C.F.R. 303.72 (h)(5). 05-06-014, § 388-14A-5008, filed 2/22/05, effective 3/25/05. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 74.20A.057, 74.20A.310. 03-20-072, § 388-14A-5008, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. 01-03-089, § 388-14A-5008, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-270.]

**WAC 388-14A-5009 What happens when an employer or other entity overcollects support from the noncustodial parent based on a DCS withholding order?**

(1) When an employer or other entity overcollects support from a noncustodial parent (NCP) based on a withholding order issued by the division of child support (DCS), DCS

evaluates what to do with the overpayment on a case by case basis.

(2) Depending on the facts of the case and the wishes of the NCP, DCS may take one of the following actions:

- (a) Refund the excess money to the NCP upon request;
- (b) Hold the excess money in suspense to be applied to the next month's support obligation; or
- (c) Any other action which comports with the requirements of this chapter and the federal regulations concerning distribution of support payments.

[Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.310, and 45 C.F.R. 303.72 (h)(5). 05-06-014, § 388-14A-5009, filed 2/22/05, effective 3/25/05.]

**WAC 388-14A-5010 How does the division of child support handle intercepted federal income tax refunds from a joint return?** (1) The division of child support (DCS) collects child support arrears through the interception of federal income tax refunds. This section deals with the issues that arise when the Secretary of the Treasury intercepts a refund based on a joint tax return filed by a noncustodial parent (NCP) and the NCP's spouse who does not owe child support.

(2) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a payment on behalf of an NCP is from an intercepted refund based on a joint return, DCS may delay distribution of that payment for up to six months in case the NCP's spouse is entitled to a share of the federal income tax refund.

(3) DCS distributes fifty percent of the payment according to WAC 388-14A-5005.

(4) DCS holds the other fifty percent of the payment in suspense until the earlier of the following:

- (a) DCS is notified by OCSE or the Secretary of the Treasury whether DCS must pay back the unobligated spouse's portion of the refund; or
- (b) For a period not to exceed six months from notification of the offset.

(5) When DCS holds part of a payment under subsection (4) of this section, DCS applies the remainder of the payment to the NCP's back support obligations if DCS is not required to return the unobligated spouse's portion of the refund. The CP may:

- (a) Request that DCS apply the payment to the NCP's back support obligation sooner upon a showing of hardship to the CP; and
- (b) Request a conference board if the CP disagrees with DCS' denial of a hardship claim.

[Statutory Authority: RCW 26.23.035, 74.08.090, 74.20A.310, and 45 C.F.R. 303.72 (h)(5). 05-06-014, § 388-14A-5010, filed 2/22/05, effective 3/25/05.]

**WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation.** (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.23.-050(3) and 26.23.050(5).

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the administrative law judge (ALJ) must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

(f) The NCP's obligation to provide medical support under RCW 26.18.170;

(g) The NCP's accrued debt and order payments toward the debt;

(h) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

(i) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow the division of child support (DCS) to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

[Statutory Authority: RCW 26.23.050, 34.05.220, 74.08.090, 74.20A.310, 05-14-102, § 388-14A-6300, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 74.08.090, 26.23.050, 34.05.220, 74.20A.055, 74.20A.-056, 45 CFR 303.11, 45 CFR 303.100, 01-03-089, § 388-14A-6300, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-100 and 388-11-210.]

**WAC 388-14A-7100 An order from another state may be registered in Washington for enforcement or modification.** (1) A support enforcement agency, or a party to a child support order or an income-withholding order for support issued by a tribunal of another state, may register the order in this state for enforcement pursuant to chapter 26.21 RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21.490 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a juris-

diction other than the state of Washington as provided in WAC 388-14A-7110.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state.

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110.

(b) The notice must be:

(i) Served by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21.540(1).

(a) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21.540(1), the presiding officer may:

(i) Stay enforcement of the registered order;

(ii) Continue the proceeding to allow the parties to gather additional relevant evidence; or

(iii) Issue other appropriate orders.

(b) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under RCW 26.21.540(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.

(d) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.

(4) Except as provided below in subsections (5) and (6) of this section, confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:

(a) By operation of law upon failure to contest registration; or

(b) By order of the administrative law judge (ALJ).

(5) Confirmation of a registered order that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the confirmed order.

(a) If interest is later assessed, the NCP or CP may not dispute the confirmed amount of the support debt.

(b) The NCP or CP may dispute the amount of interest due and owing on that confirmed amount by requesting a conference board under WAC 388-14A-6400.

(6) Confirmation of a registered order that does include interest confirms only the amount of debt, including interest, that is due and owing for the indicated time periods. Such confirmation does not relieve the NCP of any interest that may have accrued or may accrue for any other time period.

(7) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state may register the order in this state according to RCW 26.21.560 through 26.21.580.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21.580 are met.

(8) Interpretation of the registered order is governed by RCW 26.21.510.

[Statutory Authority: RCW 26.21.016, 05-07-059, § 388-14A-7100, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220, 74.20A.310, 01-03-089, § 388-14A-7100, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-260 and 388-14-495.]

**WAC 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state.** (1) The division of child support (DCS) may accept an interstate request to assess and collect interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21 RCW.

(b) The party requesting that DCS assess and collect interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to assess and collect interest on an out-of-state support

order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to assess and collect interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to assess and collect interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7100(3) and 388-14A-7115.

(a) WAC 388-14A-7100(4) describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7100(4) describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

[Statutory Authority: RCW 26.21.016. 05-07-059, § 388-14A-7110, filed 3/11/05, effective 4/11/05.]

**WAC 388-14A-7115 Are there special rules for a hearing on a notice seeking to assess and collect interest on a support order?** (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a hearing, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency or a CPA must be accepted as evidence at a hearing on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payments made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done according to the law of the state issuing the order.

(4) If the administrative law judge (ALJ) finds that the party challenging the interest calculation has shown that the amount of principal is incorrect, the ALJ:

(a) Enters an order stating the correct amount of principal;

(b) Orders the party which submitted the original interest calculation to:

(i) Recalculate or have recalculated the interest based on the new principal amount; and

(ii) Submit the new certified calculation to the ALJ within a reasonable amount of time; and

(c) After receiving the new certified calculation, enters an order determining the amount of debt, including interest, for the period claimed in the notice.

(5) If the ALJ orders a new certified calculation, DCS may enforce any amounts of principal the ALJ found to be due and owing under the support order while the administrative order under subsection (4)(c) of this section is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency or a certified public accountant (CPA). The ALJ then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a hearing under this section.

[Statutory Authority: RCW 26.21.016. 05-07-059, § 388-14A-7115, filed 3/11/05, effective 4/11/05.]

**WAC 388-14A-7117 Are there special rules for a conference board on a notice seeking to assess and collect interest on a support order?** (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a conference board under WAC 388-14A-6400, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency or a CPA must be accepted as evidence at a conference board on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payment made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done.

(4) If the conference board determines that the amount of principal is incorrect, the conference board may request that the IV-D agency or a certified public accountant that performed the initial calculation provide a new calculation based on the new principal amount.

(5) DCS may collect undisputed amounts of principal while the final conference board decision is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency or a certified public accountant. The conference board then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a conference board under this section.

(8) The conference board issues a decision, based on the evidence, determining the debt amount, including interest, for the period claimed in the notice.

[Statutory Authority: RCW 26.21.016. 05-07-059, § 388-14A-7117, filed 3/11/05, effective 4/11/05.]

**WAC 388-14A-7120 When does DCS update the interest assessed on a case?** (1) When the division of child support (DCS) accepts an interstate case for assessment of interest under WAC 388-14A-7110(1), DCS may, at any time after service of a notice of support debt and registration or a notice of support debt and demand for payment, update the amount of interest assessed on the case.

(2) To notify the parties to the order that DCS has updated the amount of interest, DCS uses a form called the Updated Interest Calculation Letter.

(a) The updated interest calculation letter is based upon a calculation of interest which has been certified by a IV-D agency or certified public accountant (CPA).

(b) DCS sends the updated interest calculation letter to the noncustodial parent (NCP), by first class mail to the NCP's last known address.

(3) The updated interest calculation letter advises the NCP of:

(a) The new, updated amount of interest owed for the arrears period; and

(b) The updated total amount of support owed, including interest.

(4) An NCP who objects to an updated interest calculation letter may request a conference board under WAC 388-14A-6400 to dispute the terms of the letter.

(5) The calculation of the amount of interest which has been certified by a IV-D agency or CPA must be accepted as evidence at a conference board on an updated interest calculation letter.

(a) The certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

[Statutory Authority: RCW 26.21.016. 05-07-059, § 388-14A-7120, filed 3/11/05, effective 4/11/05.]

**WAC 388-14A-8100 Are there special rules for setting child support for children in foster care?** Child support obligations for children in foster care are set under chapter 26.19 RCW, just like any other support obligation.

[Statutory Authority: RCW 13.34.160(3), 13.34.270(7), 74.08.090, 74.13.031(11), 74.13.350, 74.20A.030(4), and 74.20A.310. 05-12-135, § 388-14A-8100, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 74.08.090. 01-03-089, § 388-14A-8100, filed 1/17/01, effective 2/17/01.]

**WAC 388-14A-8600 Does the division of child support enforce interest on unpaid support arrears?** (1) Under RCW 26.23.030(2), the division of child support (DCS) has the authority to assess and collect interest on unpaid child support that has accrued under any support order entered into the Washington state support registry (WSSR).

(2) DCS does not assess or collect interest on administrative or court orders for support entered in the state of Wash-

ington unless the amount of interest has been reduced to a judgment.

(3) DCS may assess and collect interest on support orders entered outside of Washington state as provided in WAC 388-14A-7110.

(4) DCS may update the interest assessed on a case as provided in WAC 388-14A-7120.

[Statutory Authority: RCW 26.21.016. 05-07-059, § 388-14A-8600, filed 3/11/05, effective 4/11/05.]

## Chapter 388-25 WAC

### CHILD WELFARE SERVICES—FOSTER CARE

#### WAC

388-25-0225	What cases must be referred to the division of child support (DCS)?
388-25-0226	Does children's administration refer foster care cases to the division of child support where good cause exists?
388-25-0227	What constitutes good cause for not pursuing the collection or establishment of child support or paternity?
388-25-0228	Does the division of child support pursue collection or establish child support or paternity on cases in which good cause has been determined?
388-25-0229	Who may request a good cause determination?
388-25-0231	When may a good cause determination be requested?
388-25-1000	What is the state supplementary payment (SSP) that is administered by the children's administration (CA)?
388-25-1010	What are the eligibility requirements for the CA/SSP program?
388-25-1020	When will my eligibility for CA/SSP be determined?
388-25-1030	How will I know if I am eligible to receive a CA/SSP payment?
388-25-1040	Can I apply for the CA/SSP program if I am not identified by CA as eligible for the CA/SSP program?
388-25-1050	What are my appeal rights if CA determines that I am not eligible for CA/SSP?

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-25-0230	Are adoption support cases exempt from referral to the division of child support (DCS) for collection? [Statutory Authority: RCW 74.13.031. 01-08-047, § 388-25-0230, filed 3/30/01, effective 4/30/01.] Repealed by 05-06-091, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020.
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**WAC 388-25-0225 What cases must be referred to the division of child support (DCS)?** Each case where the department participates in the payment of foster care must be referred to the division of child support, except when:

(1) Collection would not be cost effective, including placements of seventy-two hours or less;

(2) Collection is exempt by law; or

(3) A child with developmental disabilities is eligible for admission to or discharged from a residential habilitation center as defined by RCW 71A.10.020(8), unless the child is placed as a result of an action taken under chapter 13.34 RCW.

[Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. 05-06-091, § 388-25-0225, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 74.13.031. 01-08-047, § 388-25-0225, filed 3/30/01, effective 4/30/01.]

**WAC 388-25-0226 Does children's administration refer foster care cases to the division of child support where good cause exists?** The children's administration must refer to the division of child support foster care cases in

which sufficient good cause exists to not pursue collection or establish support or paternity.

[Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. 05-06-091, § 388-25-0226, filed 3/1/05, effective 4/1/05.]

**WAC 388-25-0227 What constitutes good cause for not pursuing the collection or establishment of child support or paternity?** Children's administration uses the following criteria to determine whether sufficient good cause exists for requesting that DCS not pursue collection or establish child support or paternity on foster care cases:

- (1) It is not in the child's best interest;
- (2) The parent or other legally obligated person, or the parent or other person's child, spouse, or spouse's child was the victim of the offense for which the child was committed to the custody of the juvenile rehabilitation administration (JRA) and the child is being placed directly into foster care from a JRA facility until this placement episode closes;
- (3) Adoption proceedings for the child are pending in court or the custodial parent is being helped by a private or public agency to decide if the child will be placed for adoption;
- (4) The child was conceived as a result of incest or rape and establishing paternity would not be in the child's best interest;
- (5) The juvenile or tribal court in the dependency proceeding finds that the parents will be unable to comply with an agreed reunification plan with the child due to the financial hardship caused by paying child support. The social worker also may determine that financial hardship caused by paying child support will delay or prevent family reunification; or
- (6) The custodial parent and/or the child may be placed in danger as a result of the presence of or potential for domestic abuse perpetrated by the person that the division of child support would be pursuing for collection action.

[Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. 05-06-091, § 388-25-0227, filed 3/1/05, effective 4/1/05.]

**WAC 388-25-0228 Does the division of child support pursue collection or establish child support or paternity on cases in which good cause has been determined?** If children's administration determines that there is good cause the division of child support does not pursue collection or establish support or paternity on a foster care case.

[Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. 05-06-091, § 388-25-0228, filed 3/1/05, effective 4/1/05.]

**WAC 388-25-0229 Who may request a good cause determination?** The department or a parent, including an adoptive parent or legal guardian, may initiate a request for good cause determination at any time.

[Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. 05-06-091, § 388-25-0229, filed 3/1/05, effective 4/1/05.]

**WAC 388-25-0231 When may a good cause determination be requested?** A request for determination of good cause may be made at any time.

[Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. 05-06-091, § 388-25-0231, filed 3/1/05, effective 4/1/05.]

[2006 WAC Supp—page 1508]

**WAC 388-25-1000 What is the state supplementary payment (SSP) that is administered by the children's administration (CA)?** The state supplementary payment (SSP) is a state-paid cash assistance program for specific eligible foster children with the children's administration.

[Statutory Authority: RCW 74.04.050, 2002 c 371, RCW 74.04.600 and 74.13.031. 05-11-016, § 388-25-1000, filed 5/9/05, effective 6/9/05.]

**WAC 388-25-1010 What are the eligibility requirements for the CA/SSP program?** To be eligible to receive CA/SSP, you must be a child who has entered foster care (Title 45 CFR 1355.20) and is eligible for and receiving Supplemental Security Income (SSI), receiving behavior rehabilitation services (BRS) for out-of-home placement services for all or part of a month, and not be eligible for foster care reimbursement under Title IV-E of the Social Security Act (42 U.S.C. 670).

[Statutory Authority: RCW 74.04.050, 2002 c 371, RCW 74.04.600 and 74.13.031. 05-11-016, § 388-25-1010, filed 5/9/05, effective 6/9/05.]

**WAC 388-25-1020 When will my eligibility for CA/SSP be determined?** The SSP eligibility verification and payment process is usually done two months following the month of your potential eligibility for an SSP payment. You will receive an SSP payment when all of the eligibility criteria (WAC 388-25-1010) have been verified.

[Statutory Authority: RCW 74.04.050, 2002 c 371, RCW 74.04.600 and 74.13.031. 05-11-016, § 388-25-1020, filed 5/9/05, effective 6/9/05.]

**WAC 388-25-1030 How will I know if I am eligible to receive a CA/SSP payment?** Once you have been identified as eligible for a CA/SSP payment, CA will send out written notification to representative payees, legal guardians, and children age eighteen and above.

[Statutory Authority: RCW 74.04.050, 2002 c 371, RCW 74.04.600 and 74.13.031. 05-11-016, § 388-25-1030, filed 5/9/05, effective 6/9/05.]

**WAC 388-25-1040 Can I apply for the CA/SSP program if I am not identified by CA as eligible for the CA/SSP program?** You can apply through children's administration to determine your eligibility for CA/SSP, but eligibility is limited to those meeting the eligibility requirements in WAC 388-25-1010.

[Statutory Authority: RCW 74.04.050, 2002 c 371, RCW 74.04.600 and 74.13.031. 05-11-016, § 388-25-1040, filed 5/9/05, effective 6/9/05.]

**WAC 388-25-1050 What are my appeal rights if CA determines that I am not eligible for CA/SSP?** You have the right to appeal children's administration's denial, termination, or reduction of eligibility for the CA/SSP under RCW 74.13.045 and chapter 34.05 RCW and chapter 388-02 WAC.

[Statutory Authority: RCW 74.04.050, 2002 c 371, RCW 74.04.600 and 74.13.031. 05-11-016, § 388-25-1050, filed 5/9/05, effective 6/9/05.]

## Chapter 388-71 WAC

### HOME AND COMMUNITY SERVICES AND PROGRAMS

#### WAC

388-71-0210

What is the purpose of WAC 388-71-0210 through 388-71-0260?

388-71-0215	What definitions apply to WAC 388-71-0210 through 388-71-0260?		effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-71-0235.
388-71-0220	What is an assessment?		
388-71-0225	What is the purpose of a comprehensive assessment?	388-71-0400	What is the intent of the department's home and community programs? [Statutory Authority: RCW 74.39A.130, 74.09.520, 74.08.090. 00-04-056, § 388-71-0400, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-71-0230	How are my needs for MPC services assessed?		
388-71-0235	What is a service plan?		
388-71-0240	What services may I receive under MPC as a child?		
388-71-0245	What services are not covered under MPC for children?		
388-71-0250	Am I eligible for MPC services?		
388-71-0255	How do children remain eligible for MPC services?	388-71-0405	What are the home and community programs? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0405, filed 7/26/04, effective 8/26/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0405, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.08.090, 74.39A.130. 00-04-056, § 388-71-0405, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0015.
388-71-0260	Are there limitations to MPC services for children?		
388-71-0500	What is the purpose of WAC 388-71-0500 through 388-71-05909?		
388-71-0515	What are the responsibilities of an individual provider or home care agency provider when employed to provide care to a client?		
388-71-0520	Are there training requirements for an individual provider or a home care agency provider of an adult client?		
388-71-0540	When will the department or AAA deny payment for services of an individual provider or home care agency provider?		
388-71-05832	What is safety training?		
388-71-0704	Adult day care—Services.	388-71-0410	What services may I receive under HCP? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0410, filed 7/26/04, effective 8/26/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0410, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.-090. 02-21-098, § 388-71-0410, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.39.010, 74.09.520. 00-04-056, § 388-71-0410, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0300, 388-106-0305, 388-106-0400, 388-106-0500 and 388-106-0600.
388-71-0706	Adult day health—Services.		
388-71-0708	Adult day care—Eligibility.		
388-71-0710	Adult day health—Eligibility.		
388-71-0716	Adult day care—Assessment and service plan.		
388-71-0720	Adult day health—Assessment and service plan.		
388-71-0734	Limiting expenditures.		
<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>			
388-71-0194	Home and community services—Nursing services. [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0194, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-71-0194, filed 11/19/03, effective 12/20/03. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0194, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0194, filed 10/21/02, effective 11/21/02.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0200, 388-106-0300, 388-106-0305, 388-106-0400, 388-106-0500.	388-71-0415	What other services may I receive under the waiver-funded programs? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0415, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.-090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-71-0415, filed 11/19/03, effective 12/20/03. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0415, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.39.020. 00-04-056, § 388-71-0415, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0300, 388-106-0305.
388-71-0202	Long-term care services—Definitions. [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0202, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520. 04-04-042, § 388-71-0202, filed 1/29/04, effective 2/29/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0202, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0202, filed 10/21/02, effective 11/21/02.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-71-0215.	388-71-0420	What services are not covered under HCP? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0420, filed 7/26/04, effective 8/26/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0420, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.08.090, 74.39A.130. 00-04-056, § 388-71-0420, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0020.
388-71-0203	Long-term care services—Assessment of task self-performance and determination of required assistance. [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0203, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0203, filed 10/21/02, effective 11/21/02.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-71-0230.	388-71-0425	Who can provide HCP services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0425, filed 7/26/04, effective 8/26/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0425, filed 6/12/03, effective 7/13/03. Statutory Authority: 1999 c 175, chapters 70.126, 70.127 RCW, RCW 74.08.044. 00-04-056, § 388-71-0425, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090,
388-71-0205	Long-term care services—Service plan. [Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.-090. 02-21-098, § 388-71-0205, filed 10/21/02, effective 11/21/02.] Repealed by 05-11-082, filed 5/17/05,		



- 74.09.520. Later promulgation, see WAC 388-106-0040.
- 388-71-0430 Am I eligible for one of the HCP programs? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0430, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0430, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.030. 00-13-077, § 388-71-0430, filed 6/19/00, effective 7/20/00. Statutory Authority: RCW 74.39.010, 74.08.090, 74.39A.110, 74.09.520. 00-04-056, § 388-71-0430, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, 388-106-0610.
- 388-71-0435 Am I eligible for COPES-funded services? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0435, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0435, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.030. 00-13-077, § 388-71-0435, filed 6/19/00, effective 7/20/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0310.
- 388-71-0440 Am I eligible for MPC-funded services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0440, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-71-0440, filed 11/19/03, effective 12/20/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-23-063, § 388-71-0440, filed 11/18/02, effective 12/19/02. Statutory Authority: RCW 74.09.520. 00-04-056, § 388-71-0440, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0210.
- 388-71-0442 Am I eligible for medically needy residential waiver services? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0442, filed 6/12/03, effective 7/13/03.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0410.
- 388-71-0445 Am I eligible for chore-funded services? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0445, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0445, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.110, 74.39A.150. 01-02-051, § 388-71-0445, filed 12/28/00, effective 1/28/01. Statutory Authority: RCW 74.09.520, 74.09.530, 74.39A.110, [74.39A.]120, [74.39A.]130, 1998 c 346 § 205 (1)(c), and RCW 74.39A.030. 00-18-099, § 388-71-0445, filed 9/5/00, effective 10/6/00. Statutory Authority: RCW 74.39A.110, 74.39A.150. 00-04-056, § 388-71-0445, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0610.
- 388-71-0450 How do I remain eligible for services? [Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0450, filed 10/21/02, effective 11/21/02. Statutory Authority: 42 C.F.R. 441.302, RCW 74.09.520. 00-04-056, § 388-71-0450, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0220, 388-106-0320, 388-106-0420, 388-106-0520, and 388-106-0620.
- 388-71-0455 Can my services be terminated if eligibility requirements for HCP change? [Statutory Authority: RCW 74.09.510, 74.09.520. 00-04-056, § 388-71-0455, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0220, 388-106-0320, 388-106-0420, 388-106-0520 and 388-106-0620.
- 388-71-0460 Are there limitations to HCP services I can receive? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39.005. 03-15-010, § 388-71-0460, filed 7/3/03, effective 8/3/03. Statutory Authority: RCW 74.09.520. 00-04-056, § 388-71-0460, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0130.
- 388-71-0465 Are there waiting lists for HCP services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0465, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.39.041 and 2003 1st sp.s. c 25 § 206(9). 04-01-090, § 388-71-0465, filed 12/16/03, effective 1/16/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0465, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.39.010, 74.39A.120. 00-04-056, § 388-71-0465, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0235, 388-106-0335, 388-106-0435, and 388-106-0535.
- 388-71-0470 Who pays for HCP services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0470, filed 7/26/04, effective 8/26/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0470, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.09.530, 74.39A.110, [74.39A.]120, [74.39A.]130, 1998 c 346 § 205 (1)(c), and RCW 74.39A.030. 00-18-099, § 388-71-0470, filed 9/5/00, effective 10/6/00. Statutory Authority: RCW 74.39A.120, 74.39.010, 74.39.020. 00-04-056, § 388-71-0470, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0225, 388-106-0325, 388-106-0425, 388-106-0525 and 388-106-0625.
- 388-71-0480 If I am employed, can I still receive HCP services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0480, filed 7/26/04, effective 8/26/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0480, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.09.530, 74.39A.110, [74.39A.]120, [74.39A.]130, 1998 c 346 § 205 (1)(c), and RCW 74.39A.030. 00-18-099, § 388-71-0480, filed 9/5/00, effective 10/6/00. Statutory Authority: RCW 74.39A.140, 74.39A.150. 00-04-056, § 388-71-0480, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0230, 388-106-0330, 388-106-0430, 388-106-0530, 388-106-0630.
- 388-71-0600 What are residential services? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0600, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0600, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0600, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0010.
- 388-71-0605 Am I eligible for residential services? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0605, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.04.050, 74.04.057,

	74.04.200, and 74.08.090. 01-14-055, § 388-71-0605, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0605, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0905.		
388-71-0610	Who pays for residential care? [Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0610, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0610, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0225, 388-106-0325, 388-106-0425, and 388-106-0525.	388-71-0820	How do I qualify for Medicaid-funded PACE services? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0820, filed 6/16/03, effective 7/17/03; 02-15-138, § 388-71-0820, filed 7/22/02, effective 8/22/02. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0820, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0705.
388-71-0613	For what days will the department pay the residential care facility? [Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, and 74.08.090. 01-14-055, § 388-71-0613, filed 6/29/01, effective 7/30/01.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0225, 388-106-0325, 388-106-0425, and 388-106-0525.	388-71-0825	What are my appeal rights? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0825, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0825, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1305.
388-71-0615	If I leave a hospital, residential facility, or nursing facility, are there resources available to help me find a place to live? [Statutory Authority: RCW 74.42.450, 74.08.090. 00-04-056, § 388-71-0615, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0950.	388-71-0830	Who pays the PACE provider? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0830, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0710.
388-71-0620	Am I eligible for a residential discharge allowance? [Statutory Authority: RCW 74.42.450, 74.08.090. 00-04-056, § 388-71-0620, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0955.	388-71-0835	How do I enroll into the PACE program? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0835, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0835, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0705.
388-71-0700	What are the requirements for nursing facility eligibility, assessment, and payment? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0700, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.39A.040, 74.42.056. 00-22-018, § 388-71-0700, filed 10/20/00, effective 10/31/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0350, 388-106-0355, and 388-106-0360.	388-71-0840	How do I disenroll from the PACE program? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0840, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0840, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0715.
388-71-0800	What is PACE? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0800, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0800, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0015.	388-71-0845	What are my rights as a PACE client? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0845, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0845, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1300.
388-71-0805	What services does PACE cover? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0805, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0805, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0700.	388-71-0900	What is the intent of WAC 388-71-0900 through 388-71-0960? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0900, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.
388-71-0810	Who provides these services? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0810, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0810, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.	388-71-0905	What is private duty nursing (PDN) for adults? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0905, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.
388-71-0815	Where are these services provided? [Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0815, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0815, filed 9/13/99, effective 10/14/99.] Repealed by 05-11-082,	388-71-0910	Am I financially eligible for Medicaid-funded private duty nursing services? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0910, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.
		388-71-0915	Am I medically eligible to receive private duty nursing services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0915, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0915, filed 5/4/01, effective

	6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1005	Who administers the Senior Citizens Services Act funds? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1005, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-71-0920	How is my eligibility determined? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0920, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1010	What services does the SCSA fund? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1010, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1100.
388-71-0925	Am I required to pay participation toward PDN services? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0925, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1015	How do I apply for SCSA-funded services? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1015, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1105.
388-71-0930	Are PDN costs subject to estate recovery? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0930, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1020	Am I eligible for SCSA-funded services at no cost? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1020, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1110.
388-71-0935	Who can provide my PDN services? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0935, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1025	What income and resources are exempt when determining eligibility? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1025, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1115.
388-71-0940	Are there limitations or other requirements for PDN? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0940, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1030	What if I am not eligible to receive SCSA-funded services at no cost? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1030, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1120.
388-71-0945	What requirements must a home health agency meet in order to provide and get paid for my PDN? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0945, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1035	What are my rights under SCSA? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1035, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1300.
388-71-0950	What requirements must a private RN or LPN meet in order to provide and get paid for my PDN services? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0950, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1065	What is the purpose of the respite care program? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1065, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0015, 388-106-1205.
388-71-0955	Can I receive PDN in a licensed adult family home (AFH)? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 C.F.R. 440.80. 01-11-018, § 388-71-0955, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1070	What definitions apply to respite care services? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1070, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1200.
388-71-0960	Can I receive services in addition to PDN? [Statutory Authority: 2004 c 276 § 206 (6)(b) and <i>Townsend vs. DSHS</i> , U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-0960, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0960, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1075	Who is eligible to receive respite care services? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1075, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1210.
388-71-0965	Can I choose to self-direct my care if I receive PDN? [Statutory Authority: RCW 74.08.090, 74.09.520, 42 CFR 440.80. 01-11-018, § 388-71-0965, filed 5/4/01, effective 6/4/01.] Repealed by 05-24-091, filed 12/6/05, effective 1/6/06. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. Later promulgation, see chapter 388-106 WAC.	388-71-1080	Who may provide respite care services? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1080, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1215.
388-71-1000	What is the Senior Citizens Services Act? [Statutory Authority: RCW 74.38.030. 00-04-056, § 388-71-1000, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0015.	388-71-1085	How are respite care providers reimbursed for their services? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1085, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1220.
		388-71-1090	Are participants required to pay for the cost of their services? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1090, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1225.
		388-71-1095	Are respite care services always available? [Statutory Authority: RCW 74.41.040. 00-04-056, § 388-71-1095, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1225.

- ity: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-1230.
- 388-71-1100 What is volunteer chore services (VCS)? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030, 74.39A.100. 00-04-056, § 388-71-1100, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0015, 388-106-0650.
- 388-71-1105 Am I eligible to receive volunteer chore services? [Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-71-1105, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030, 74.39A.100. 00-04-056, § 388-71-1105, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520. Later promulgation, see WAC 388-106-0655.
- 388-71-1110 How do I receive information on applying for volunteer chore services? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030, 74.39A.100. 00-04-056, § 388-71-1110, filed 1/28/00, effective 2/28/00.] Repealed by 05-11-082, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520.

**WAC 388-71-0210 What is the purpose of WAC 388-71-0210 through 388-71-0260?** The purpose of this section is to describe comprehensive assessment and service plan procedures and eligibility criteria for children age seventeen and younger, receiving Medicaid personal care (MPC). This section does not apply to you if you are assessed in the comprehensive assessment reporting evaluation (CARE).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0210, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0215 What definitions apply to WAC 388-71-0210 through 388-71-0260?** The following definitions apply to this chapter:

"Ambulation" means assisting the child to move around as a result of a disability. Ambulation includes age appropriate supervision of the child when walking alone or with the help of a mechanical device such as a walker if guided, assisting with difficult parts of walking such as climbing stairs, supervising the child if able to propel a wheelchair if guided, pushing of the wheelchair, and providing constant or standby physical assistance to the child if totally unable to walk alone or with a mechanical device.

"Assessment" means an inventory and evaluation of a child's abilities and needs based on an in-person interview in the child's own home.

"Bathing" means assisting the child to wash. Bathing includes age appropriate supervision of the child who is able to bathe when guided, assisting the child with difficult tasks such as getting in or out of the tub or washing back, and completely bathing the child if totally unable to wash self.

"Body care" means age appropriate assistance to the child, as a result of a disability, with exercises, skin care including the application of nonprescribed ointments or lotions, changing dry bandages or dressings when professional judgment is not required, and pedicure to trim toenails and apply lotion to feet. Body care excludes:

- Foot care for child who is diabetic or has poor circulation; or
- Changing bandages or dressings when sterile procedures are required.

"Child/children" means a child age seventeen and younger.

"Department" means the state department of social and health services, aging and disability services administration.

"Dressing" means age appropriate assistance with dressing and undressing as a result of the child's disability. Dressing includes supervising and guiding the child when dressing and undressing, assisting with difficult tasks such as tying shoes and buttoning, and completely dressing or undressing when unable to participate in dressing or undressing self.

"Eating" means age appropriate assistance with eating as a result of the child's disability. Eating includes supervising children when able to feed self if guided, assisting with difficult tasks such as cutting food or buttering bread, and feeding the child when unable to feed self.

"Household assistance" means assistance with incidental household tasks provided as an integral, but subordinate part of personal care. Household assistance is considered an integral part of personal care when such assistance is directly related to the children's medical or mental health condition, is reflected in the children's service plan, and is provided only when children are assessed as needing personal care assistance with one or more direct personal care tasks. Household assistance tasks include a second adult to assist with travel to medical services, meal preparation, laundry, housework.

"Housework" means, as a result of the child's disability, extraordinary housekeeping measures are required. The following are examples: Daily extensive cleaning due to a child's severe allergies or substantial cleanup is required due to destructive behaviors which are a result of the child's disability.

"Laundry" means extraordinary laundry needs are required due to excessive soiling related to the child's medical condition.

"Meal preparation" means unusual time or tasks are required such as ground food or special diet preparations due to the child's disability.

"Own home" means any of the following places where the child resides:

- In the home of the natural, step, or adoptive parent;
- In a relative's established residence;
- In the home of any legally responsible adult; or
- In a children's administration licensed and paid child foster home.

"Personal care services" mean both physical assistance and/or prompting and supervising the performance of direct personal care tasks and household tasks. Such services may be provided for children who are functionally unable to perform all or part of such tasks or who are incapable of performing the tasks without specific instructions. Personal care services do not include assistance with tasks that are age appropriate for children or performed by a licensed health professional.

"Personal hygiene" means age appropriate assistance required as a result of the child's disability with care of hair, teeth, shaving, menses care, filing of nails, and other basic personal hygiene and grooming needs. Personal hygiene includes supervising the child when performing the tasks, assisting the child to care for own appearance, and performing grooming tasks when the child is unable to care for own appearance.

"Positioning" means age appropriate assistance required as a result of the child's disability to assume a desired position, assistance in turning and positioning to prevent secondary disabilities, such as contractures and balance deficits or exercises to maintain the highest level of functioning which has already been attained and/or to prevent the decline in physical functional level. (Range of motion ordered as part of a physical therapy treatment is not included.)

"Supervision" means being available to:

- Help the child with age appropriate personal care tasks that cannot be scheduled, such as toileting, ambulation, transfer, positioning, as a result of a disability; and
- Provide age appropriate protective supervision to a child age twelve or older who cannot be left alone due to the disability.

"Toileting" means age appropriate assistance with bladder or bowel functions as a result of the child's disability. Toileting includes guidance when the child is able to care for own toileting needs, helping to and from the bathroom, assisting with bedpan routines, using incontinent briefs on the child, and lifting the child on and off the toilet. Toileting may include performing routine perineal care, colostomy care, or catheter care for the child when he/she is able to supervise the activities.

"Transfer" means age appropriate assistance required, as a result of the child's disability, with getting in and out of a bed or wheelchair or on and off the toilet or in and out of the bathtub. Transfer includes supervising the child when able to transfer if guided, providing steadying, and helping the child when he/she can assist in own transfer.

"Travel to medical services" means transporting the child to a physician's office or clinic in the local area to obtain medical diagnosis or treatment when a child, as a result of a disability, requires a second adult to accompany the parent or guardian.

"You" means a child.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0215, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0220 What is an assessment?** An assessment is an inventory and evaluation of abilities and needs based on an in-person interview in your own home or place of residence, using the department-prescribed form, comprehensive assessment (child).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0220, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0225 What is the purpose of a comprehensive assessment?** The purpose of the comprehensive assessment is to:

- (1) Identify strengths to maximize current strengths and promote your independence;
- (2) Evaluate physical health, functional and cognitive abilities, social resources and emotional and social functioning for service planning for long-term care;
- (3) Identify your values and preferences for effective service planning; and
- (4) Determine your need for informal support, community support and services, and department paid services.
- (5) Account for your:

- (a) Health status, psychological/social/cognitive functioning, income and resources, and functional abilities;
- (b) Living situation; and
- (c) Availability of alternative resources providing needed assistance, including family, neighbors, friends, community programs, and volunteers.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0225, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0230 How are my needs for MPC services assessed?** (1) Using the comprehensive assessment, the department will determine your ability to self-perform each personal care task and household task using the following definitions of the assistance required:

- (a) Ambulation:
  - (i) Independent. No special assistance is needed.
  - (ii) Minimal. You are age four or older and you need your hand held on stairs or uneven surfaces or use adaptive devices with minimal assistance.
  - (iii) Substantial. You are age four or older and mobile inside but need assistance of another person outside.
  - (iv) Total.
    - (A) You are age two or three and always require total physical assistance (e.g. you need to be carried or your caregiver must push your manual wheelchair).
    - (B) You are age four or older and only mobile with physical assistance of another person or need ongoing assistance with adaptive devices.
- (b) Bathing:
  - (i) Independent. You can bathe self.
  - (ii) Minimal.
    - (A) You are age eight or older and require minor physical or verbal assistance such as adjusting water temperature; or
    - (B) You are age five or older and require the presence of an adult in the room due to your health condition.
  - (iii) Substantial. You are age five or older and require physical help in a large part of the bathing activity (i.e. to lather, wash and/or rinse own body or hair).
  - (iv) Total. You are age five or older and dependent on others to provide a complete bath.
- (c) Body care:
  - (i) Independent. No specialized body care is needed.
  - (ii) Minimal. You are age ten or older and need reminding or occasional physical assistance to: Apply nonprescription ointments or lotion; perform nonsterile bandage or dressing change; or perform exercises.
  - (iii) Substantial. You are age ten or older and require limited physical help to: Apply ointment/lotion; perform nonsterile bandage or dressing change; or perform exercises on a daily basis.
  - (iv) Total. You are age ten or older and dependent on others to perform all required body care.
- (d) Dressing:
  - (i) Independent. You can dress and undress without assistance or supervision.
  - (ii) Minimal. You are age eight or older and need some physical assistance, reminders, or supervision several times per week.
  - (iii) Substantial. You are age four or older and need daily physical assistance to do parts of dressing and undressing.

(iv) Total. You are age four or older and totally dependent on others to do all dressing and undressing or significant time and effort is required due to the nature of your disability or behavior.

(e) Eating:

(i) Independent. You can feed self, chew and swallow solid foods without difficulty, or can feed self by stomach tube or catheter.

(ii) Minimal. You are age four or older and can feed self, chew and swallow, but need verbal prompting to maintain adequate intake; or you are age ten or older and also need assistance with such things as cutting up food, buttering bread and pouring liquids.

(iii) Substantial. You are age three or older and

(A) Can feed self but need stand-by assistance for occasional gagging, choking, or swallowing difficulty; or

(B) Need reminders/assistance with adaptive feeding equipment; or

(C) Must be fed some or all food by mouth by another person.

(iv) Total. You are a child of any age who needs extraordinary time and supervision due to behavior issues or because you frequently gag or choke due to swallowing difficulties.

(f) Housework:

(i) Independent. No extraordinary housework needs.

(ii) Total. You are a child of any age who, as a result of your disability, requires extraordinary housekeeping measures such as daily extensive cleaning due to severe allergies or substantial clean up is required due to destructive behaviors.

(g) Laundry:

(i) Independent. No additional needs for laundry.

(ii) Total. You are a child of any age who has extraordinary laundry needs or clothing repairs due to excessive soiling related to your medical condition.

(h) Meal preparation:

(i) Independent. No unusual time or activities required or you are able to participate as expected in simple meal preparation.

(ii) Total. You are a child of any age and unusual time or tasks are required such as grinding food or special diet preparations; or you are age ten or older and totally dependent on others for meal preparation due to cognitive, physical or behavioral disability.

(i) Personal hygiene:

(i) Independent. You can manage personal hygiene and grooming tasks on a regular basis.

(ii) Minimal. You are age twelve or older and must be reminded and supervised at least some of the time.

(iii) Substantial. You are age eight or older and always require direct physical assistance with such tasks as combing hair, brushing teeth, menses care and shaving.

(iv) Total. You are age five or older and all personal hygiene must be done by someone else.

(j) Positioning:

(i) Independent. No positioning needed.

(ii) Minimal. You are age three or older and require assistance some of the time.

(iii) Substantial. You are age three or older and can move self, but assistance with positioning is required throughout

the day such as specialized sleeping positions, sitting supports and/or minor adjustments to adaptive equipment.

(iv) Total.

(A) You are age two or older and cannot move self and require positioning by another person most or all of the time throughout the day; or

(B) You are a child of any age who requires scheduled positioning changes by another person throughout the night.

(k) Toileting:

(i) Independent. No additional help is needed.

(ii) Minimal. You are age four or older and:

(A) Require verbal cueing and/or have occasional infrequent daytime toileting accidents and/or have a toileting program that must be followed; or

(B) Need occasional physical assistance for one or more of the following: Clothing adjustments, washing hands, wiping and cleansing.

(iii) Substantial. You are age four or older and cannot get to the toilet without assistance; or need substantial physical assistance at least daily with part of the task.

(iv) Total.

(A) You are age four or older and require total cleansing and are unable to use toilet or require incontinence supplies.

(B) You are a child of any age and have a medical condition requiring more frequent scheduled change of incontinence garments on a twenty-four hour basis.

(C) You are age eight or older, you are continent during the day but are incontinent at night and require incontinence garment changes during the night.

(l) Transfer:

(i) Independent. You can transfer without physical assistance.

(ii) Minimal. You are age four or older and need assistance on occasion.

(iii) Substantial. You are age four or older and need daily assistance and can bear some weight and assist with your transfer; or weigh less than thirty pounds.

(iv) Total. You are a child of any age who weighs thirty pounds or more and requires total physical support of the caregiver to transfer.

(m) Travel to medical services:

(i) Independent. No unusual transportation needs required.

(ii) Minimal. You are a child of any age and have a medical condition that requires a second adult to assist with transport to medical appointments less than monthly.

(iii) Substantial. You are a child of any age and have a medical condition that requires a second adult to assist with transport to medical appointments at least monthly.

(iv) Total. You are a child of any age and have a medical condition that requires a second adult to assist with transport to medical appointments at least weekly.

(2) The department will score functional abilities and supports.

(a) For each direct personal care service and household assistance task listed on the CA, the department must determine:

(i) Your ability to perform each activity;

(ii) Assistance available to you through alternative resources, including parents, families, friends, neighbors, community programs, and unpaid caregivers; and

(iii) Assistance needed from department programs after alternative resources have been taken into account.

(b) The department must award points for each task based on the level of unmet need. The number of points allowable for each task is listed below under columns identified as 0 = none, M = minimal, S = substantial, and T = total:

Task	0	M	S	T
Eating	0	5	12	16
Toileting	0	5	12	16
Ambulation	0	8	10	12
Transfer	0	4	8	11
Positioning	0	3	5	7
Body care	0	4	5	6
Personal hygiene	0	4	6	8
Dressing	0	5	8	12
Bathing	0	4	8	10
Travel to medical services	0	1	2	3
Meal preparation	0	0	0	6
Laundry	0	0	0	4
Housework	0	0	0	5

(c) The department must add together the points awarded for each task to obtain the total score for you.

(3) The department must determine if additional hours of supervision are needed:

(a) Due to cognitive protective supervision; and

(b) For standby assistance necessary for unscheduled tasks. (NOTE: Supervision hours show a child's need and may not reflect department paid hours as determined by program standards.)

(4) The department must authorize services to correspond with your assessed need according to eligibility criteria and your service plan. The department must notify you of the right to contest the department's decision and/or the results of the assessment.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0230, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0235 What is a service plan?** (1) The department must develop a service plan with you to identify ways to meet your needs with the most appropriate services, both formal and informal.

(2) The department must document:

(a) Your specific problems and needs;

(b) A plan for meeting each need;

(c) Responsible parties for carrying out each part of the plan;

(d) Anticipated outcomes;

(e) Dates and changes to the plan;

(f) Dates of referral, service initiation, follow-up reviews; and

(g) Your agreement to the service plan.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0235, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0240 What services may I receive under MPC as a child?** You may receive personal care services in your own home as defined in WAC 388-71-0215, and as applicable, assistance with personal care tasks while you are out of the home accessing community resources.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0240, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0245 What services are not covered under MPC for children?** MPC does not cover the following services:

(1) Teaching, including teaching how to perform personal care tasks;

(2) Development of social, behavioral, recreational, communication, or other types of community living skills;

(3) Nursing care;

(4) Personal care services provided outside of your residence, unless the services are authorized in your written service plan and meet the program criteria;

(5) Child care;

(6) Respite care;

(7) Sterile procedures, administration of medications, or other tasks requiring a licensed health professional, unless provided by a family member;

(8) Services provided over the telephone;

(9) Services provided outside the state of Washington unless you are receiving personal care assistance while temporarily traveling out of state and:

(i) Your individual provider is contracted with the state of Washington; and

(ii) The travel plans are coordinated with your social service case manager prior to departure; and

(iii) Services are authorized on your service plan prior to departure; and

(iv) Services are strictly for your personal care, which does not include your provider's travel time, expenses, lodging or subsistence;

(10) Services to assist other household members not eligible for services; and

(11) Yard care.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0245, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0250 Am I eligible for MPC services?** To be eligible for MPC-funded services you must:

(1) Have unmet need for substantial assistance with at least one of the following direct personal care tasks or have unmet needs for minimal assistance with three of the following direct personal care tasks:

(a) Ambulation;

(b) Bathing;

(c) Body care;

(d) Dressing;

(e) Eating;

(f) Personal hygiene;

(g) Positioning;

(h) Self-medication;

(i) Toileting; or

(j) Transfer.

(2) Be certified as Title 19 categorically needy, as defined in WAC 388-500-0005.

(3) Be assessed by department staff or designee using a department approved comprehensive assessment and have a determination of unmet needs for services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0250, filed 5/17/05, effective 6/17/05.]



**WAC 388-71-0255 How do children remain eligible for MPC services?** In order to remain eligible for services, you must:

- (1) Be reassessed at least every twelve months; and
- (2) Meet eligibility requirements for MPC.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0255, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0260 Are there limitations to MPC services for children?** The following are limitations to MPC services you can receive:

- (1) MPC services may not replace other available resources, both paid and unpaid.
- (2) ADSA published rates and program rules establish your total hours and how much the department pays toward the cost of your services.
- (3) The department will not pay for housework, laundry, or meal preparation, when you and your individual provider, agency provider, or personal aide live in the same household.
- (4) The department will adjust payments to an individual provider, agency provider, or personal aide who is doing household tasks for more than one client living in the same household.
- (5) MPC cannot pay for services already reimbursed with other state and federal funding.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0260, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0500 What is the purpose of WAC 388-71-0500 through [388-71-05952] [388-71-05909]?** A client/legal representative may choose an individual provider or a home care agency provider. The intent of WAC 388-71-0500 through [388-71-05952] [388-71-05909] is to describe the:

- (1) Qualifications of an individual provider, as defined in WAC 388-106-0010;
- (2) Qualifications of a home care agency provider, as defined in WAC 388-106-0010 and chapter 246-336 WAC;
- (3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency provider;
- (4) Training requirements for an individual provider and home care agency provider.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0500, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090, 02-21-098, § 388-71-0500, filed 10/21/02, effective 11/21/02. Statutory Authority: Chapter 74.39A RCW and 2000 c 121, 02-10-117, § 388-71-0500, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095, 01-11-019, § 388-71-0500, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 00-03-043, § 388-71-0500, filed 1/13/00, effective 2/13/00.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency provider when employed to provide care to a client?** An individual provider or home care agency provider must:

- (1) Understand the client's plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;
- (2) Provide the services as outlined on the client's plan of care, as defined in WAC 388-106-0010;
- (3) Accommodate client's individual preferences and differences in providing care;
- (4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the plan of care;
- (5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;
- (7) Notify the case manager immediately if the client dies;
- (8) Notify the department or AAA immediately when unable to staff/serve the client; and
- (9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. Notification to the client/legal guardian must:
  - (a) Give at least two weeks' notice, and
  - (b) Be in writing.
- (10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and
- (11) Comply with all applicable laws and regulations.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0515, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090, 02-21-098, § 388-71-0515, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095, 01-11-019, § 388-71-0515, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 00-03-043, § 388-71-0515, filed 1/13/00, effective 2/13/00.]

**WAC 388-71-0520 Are there training requirements for an individual provider or a home care agency provider of an adult client?** An individual provider or a home care agency provider for an adult client must meet the training requirements in WAC 388-71-05665 through 388-71-05865.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0520, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW, 04-02-001, § 388-71-0520, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121, 02-10-117, § 388-71-0520, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 00-03-043, § 388-71-0520, filed 1/13/00, effective 2/13/00.]

**WAC 388-71-0540 When will the department or AAA deny payment for services of an individual provider or home care agency provider?** The department or AAA will deny payment for the services of an individual provider or home care agency provider who:

- (1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under Medicaid personal care;

(3) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(4) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(5) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(6) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(7) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(8) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(9) In addition, the department or AAA may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0540, filed 5/17/05, effective 6/17/05. Statutory Authority: Chapter 74.39A RCW and 2000 c 121, 02-10-117, § 388-71-0540, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095, 01-11-019, § 388-71-0540, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 00-03-043, § 388-71-0540, filed 1/13/00, effective 2/13/00.]

**WAC 388-71-05832 What is safety training?** Safety training and applicable requirements are defined in WAC 257-05-020 through 257-05-240.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-05832, filed 5/17/05, effective 6/17/05.]

**WAC 388-71-0704 Adult day care—Services.** Adult day care is a supervised daytime program providing core services as defined in WAC 388-106-0800. Core services are appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0704, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030, 03-06-024, § 388-71-0704, filed 2/24/03, effective 7/1/03.]

**WAC 388-71-0706 Adult day health—Services.** Adult day health is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services. Adult day health services are only appropriate for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

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The adult day health center must offer and provide on site the services listed in WAC 388-106-0810.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0706, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030, 03-06-024, § 388-71-0706, filed 2/24/03, effective 7/1/03.]

**WAC 388-71-0708 Adult day care—Eligibility.** Clients are eligible for adult day care services if they meet criteria outlined in WAC 388-106-0805.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0708, filed 5/17/05, effective 6/17/05. Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z, 04-16-029, § 388-71-0708, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030, 03-06-024, § 388-71-0708, filed 2/24/03, effective 7/1/03.]

**WAC 388-71-0710 Adult day health—Eligibility.** Clients are eligible for adult day health services if they meet the criteria outlined in WAC 388-106-0815.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0710, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030, 03-06-024, § 388-71-0710, filed 2/24/03, effective 7/1/03.]

**WAC 388-71-0716 Adult day care—Assessment and service plan.** (1) The department or an authorized case manager must perform a CARE assessment to determine a client's need for adult day care, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day care services or whether the client's needs can be met in other ways.

(2) If the case manager determines an unmet need for a core service that may be provided at a day care center, the case manager works with the client and/or the client's representative to develop a service plan that documents the needed services and the number of days per week that the services are to be provided. The case manager refers the client to a waiver-contracted day care center that the client and the case manager agree can potentially meet the client's needs.

(3) Clients receiving adult day care services must be reassessed at least annually.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0716, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030, 03-06-024, § 388-71-0716, filed 2/24/03, effective 7/1/03.]

**WAC 388-71-0720 Adult day health—Assessment and service plan.** (1) The department or an authorized case manager must perform a CARE assessment to determine a client's need for adult day health, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day health services or whether the client's needs can be met in other ways.

(2) If the client has a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must assess the client's need for skilled nursing or skilled rehabilitative therapy within the department's normal time frames for client reassessments.

(3) If the client does not have a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or refer the client to the department for intake. The department's assigned case manager must assess the client's need for adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) The case manager may consult with the client's practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines and documents a potential unmet need for day health services, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and the anticipated number of days per week that the services are needed. The case manager refers the client to a department contracted day health center for evaluation and the development of a preliminary negotiated plan of care.

(6) The department or area agency on aging case manager must reassess adult day health clients at least annually. Clients must also be reassessed if they have a break in service of more than thirty days. The adult day center must inform the case manager of the break in service so payment authorization can be discontinued.

(7) Recipients of adult day health services must be assessed by the department or an authorized case manager for continued or initial eligibility as follows:

(a) Annual reassessment for department clients;

(b) Adult day health quarterly review for current nondepartmental clients as resources allow; and

(c) New referrals for adult day health services are to be forwarded to local department offices for intake and assessment for eligibility.

(8) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-71-0720, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0720, filed 2/24/03, effective 7/1/03.]

**WAC 388-71-0734 Limiting expenditures.** (1) In order to provide adult day services within the limits of available funding, the department may limit services when program expenditures exceed the budget appropriation or when limiting services is required to prevent expenditures from exceeding the appropriation.

(2) When adult day health program expenditures exceed available funding, the department may limit adult day health services based on the four care level system as determined through the established department assessment and described in chapter 388-105 WAC.

(a) Using the care level determined by the department assessment tool, the department will limit adult day services on a statewide basis to clients whose total scores exceed the assessed need level identified by the department as necessary to provide adult day health services to the extent of available funding.

(b) At least thirty days before implementing the limitation on services under this subsection, the department will notify the area agencies on aging, adult day health centers, and the affected adult day health clients that services are being limited and for what period of time the limitation is estimated to remain in effect.

(c) For purposes of RCW 74.08.080, the reduction in services shall be deemed an assistance adjustment for an entire class of recipients that is required by state laws prohibiting the department from expending funds in excess of appropriations.

(3) The department may adopt additional or alternative rules to control costs, such as, but not limited to, imposing a moratorium on contracting with new adult day centers, limiting services to clients based on level of care need, or reducing the numbers of days per week that clients may receive services.

[Statutory Authority: RCW 74.04.050, 74.04.200, 74.09.520, 74.39A.030. 05-02-064, § 388-71-0734, filed 1/4/05, effective 2/4/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0734, filed 2/24/03, effective 7/1/03.]

## Chapter 388-76 WAC

### ADULT FAMILY HOMES MINIMUM LICENSING REQUIREMENTS

#### WAC

388-76-540	Definitions.
388-76-560	License eligibility.
388-76-575	Licensing of state employees.
388-76-585	Change of provider or provider address.
388-76-595	Inspections and ombudsman visits.
388-76-655	General management and administration.
388-76-685	Criminal history disclosure and background inquiries.
388-76-715	Dispute resolution.
388-76-76505	What physical structure requirements must the provider ensure that the home meets?

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-76-59020	What definitions apply to specialty adult family home designations? [Statutory Authority: RCW 70.128.040, 70.128.060, chapter 70.129 RCW and 1998 c 272, 98-12-054, § 388-76-59020, filed 5/29/98, effective 7/1/98.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
388-76-64005	Definitions. [Statutory Authority: RCW 70.128.040, 69.41.085, 02-20-005, § 388-76-64005, filed 9/18/02, effective 10/19/02.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
388-76-9970	Purpose. [Statutory Authority: 1997 c 392 §§ 402, 403 and 532 (E2SHB 1850). 97-18-089, § 388-76-9970, filed 9/3/97, effective 9/4/97.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
388-76-9972	Definitions. [Statutory Authority: 1997 c 392 §§ 402, 403 and 532 (E2SHB 1850). 97-18-089, § 388-76-9972, filed 9/3/97, effective 9/4/97.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
388-76-9974	Effective date of the moratorium. [Statutory Authority: 1997 c 392 §§ 402, 403 and 532 (E2SHB 1850). 97-18-089, § 388-76-9974, filed 9/3/97, effective 9/4/97.]

- Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
- 388-76-9976 Process for requesting an individual accommodation. [Statutory Authority: 1997 c 392 §§ 402, 403 and 532 (E2SHB 1850). 97-18-089, § 388-76-9976, filed 9/3/97, effective 9/4/97.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
- 388-76-9978 Applications that will be processed during the moratorium. [Statutory Authority: 1997 c 392 §§ 402, 403 and 532 (E2SHB 1850). 97-18-089, § 388-76-9978, filed 9/3/97, effective 9/4/97.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.
- 388-76-9980 Notification of the end of the moratorium. [Statutory Authority: 1997 c 392 §§ 402, 403 and 532 (E2SHB 1850). 97-18-089, § 388-76-9980, filed 9/3/97, effective 9/4/97.] Repealed by 05-17-158, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040.

**WAC 388-76-540 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means a nonaccidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual.

**"Adult family home"** means the same as the definition in RCW 70.128.010.

**"Applicant"** means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

**"Capacity"** means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home who receive special care.

**"Caregiver"** means any person eighteen years of age or older responsible for providing direct personal care to a resident and may include but is not limited to the provider, resident manager, employee, relief caregiver, volunteer, student, entity representative, or household member.

**"Case manager"** means the department staff person or designee assigned to negotiate, monitor, and facilitate a service plan for residents receiving services fully or partially paid for by the department.

**"Chemical restraint"** means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

**"Dementia"** is defined as a condition documented through the assessment process required by WAC 388-76-61020.

**"Department"** means the Washington state department of social and health services.

**"Developmental disability"** means:

(1) A person who meets the eligibility criteria defined in Washington Administrative Code by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or

services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age twenty-two;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

**"Enablers"** means a physical device used to facilitate a resident's self-administration of a prescribed or over-the-counter medication. Physical devices include, but are not limited to a medicine cup, glass, cup, spoons, bowl, pre-filled syringes, syringes used to measure oral liquids, specially adapted table surfaces, drinking straw, piece of cloth, and the resident's hand.

**"Entity provider"** means any corporation, partnership, association, or limited liability company that is licensed under this chapter to operate an adult family home.

**"Entity representative"** means the individual designated by an entity provider who is responsible for the daily operation of the adult family home.

**"Exploitation"** means the illegal or improper use of a frail elder or vulnerable adult or that person's income or resources, including trust funds, for another person's profit or advantage.

**"Frail elder or vulnerable adult"** means the same as the definition in RCW 74.34.020 or 43.43.830.

**"Individual provider"** means an individual person or a legally married couple who is licensed to operate an adult family home.

**"Inspection"** means an on-site visit by department personnel to determine the adult family home's compliance with this chapter and chapter 70.128 RCW, Adult family homes.

**"Medication organizer"** is a container with separate compartments for storing oral medications organized in daily doses.

**"Mental illness"** is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

**"Multiple facility provider"** means an individual or entity provider who is licensed to operate more than one adult family home.

**"Neglect"** means a pattern of conduct or inaction resulting in deprivation of care necessary to maintain a resident's physical or mental health.

**"Nursing assistant"** means the same as the definition in chapter 18.88A RCW.

**"Over-the-counter (OTC) medication"** is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

**"Personal care services"** means both physical assistance and/or prompting and supervising the performance of

direct personal care tasks as determined by the resident's needs. Personal care services do not include assistance with tasks performed by a licensed health professional.

**"Physical restraint"** means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

**"Practitioner"** includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

**"Prescribed medication"** refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Provider"** means any person or entity that is licensed under this chapter to operate an adult family home.

**"Resident"** means any adult unrelated to the provider who lives in the adult family home and who is in need of care. **"Resident"** includes former residents when examining complaints about admissions, readmissions, transfers or discharges. For decision-making purposes, the term "resident" includes the resident's surrogate decision maker in accordance with state law or at the resident's request.

**"Resident manager"** means a person employed or designated by the provider to manage the adult family home.

**"Special care"** means care beyond personal care services as defined by **"personal care services"** in this section.

**"Unsupervised"** means the same as the definition in RCW 43.43.830(9).

[Statutory Authority: RCW 70.128.040, 05-17-158, § 388-76-540, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090, 02-21-098, § 388-76-540, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW, 98-11-095, § 388-76-540, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230, 96-14-003 (Order 3984), § 388-76-540, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-560 License eligibility.** (1) The department shall consider separately and jointly as applicants each person and entity named or affiliated in an application for an adult family home license. A person is considered affiliated with the applicant if the person is listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant. If the department finds any person or entity unqualified, the department shall deny the license.

(2) In making a determination whether to grant an adult family home license, the department shall review:

(a) The information in the application; and

(b) Other documents and information the department deems relevant, including inspection and complaint investigation findings in each facility or home for the care or provision of services to children or vulnerable adults with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the entity applicant is or has been affiliated.

(3) The applicant and the home for which the license is sought shall comply with all requirements established by

chapter 70.128 RCW and this chapter. The department may deny a license for noncompliance with any such requirements.

(4) An individual provider shall be twenty-one years of age or older.

(5) A provider shall have the understanding, ability, emotional stability and physical health suited to meet the emotional and physical care needs of vulnerable adults.

(6) An adult family home shall not simultaneously be licensed as a boarding home.

(7) The department shall deny, suspend or revoke a license if any of the following people have a history of significant noncompliance with federal or state regulations in providing care or services to vulnerable adults or children:

- An applicant/provider,
- A person affiliated with the applicant,
- A resident manager,
- A partner of the entity,
- An officer of the entity,
- A director of the entity,
- A managerial employee of the entity,
- An entity representative,
- Spouse of the provider, or
- An owner of five percent or more of the entity.

The department shall consider, at a minimum, the following as a history of significant noncompliance requiring denial of a license:

(a) Revocation or suspension of a license for the care of children or vulnerable adults;

(b) Enjoined from operating a facility for the care of children or adults;

(c) Revocation, cancellation, suspension, or nonrenewal of a Medicaid or Medicare provider agreement by the contracting agency; or

(d) Revocation, cancellation, suspension, or nonrenewal of any agreement with a public agency for the care or treatment of children or vulnerable adults, when the action is taken by the public agency.

(8) The department may deny, suspend or revoke a license if any of the following people meet any of the criteria under subsection (9) of this section:

- Any person who is a caregiver;
- Any person who has unsupervised access to residents in the adult family home; or
- Any person who lives in the home but who is not a resident.

(9) The department shall deny, suspend or revoke a license if:

- An applicant/provider,
- A person affiliated with the applicant,
- Any person who is a caregiver,
- Any person who has unsupervised access to residents in the adult family home,
- Any person who lives in the home but who is not a resident,
- A resident manager,
- A partner of the entity,
- An officer of the entity,
- A director of the entity,
- A managerial employee of the entity,
- An entity representative,

- A spouse of the provider,
- An owner of fifty percent or more of the entity, or
- An owner who exercises control over daily operations,

has been:

(a) Convicted of a crime against a person as defined under RCW 43.43.830 or 43.43.842;

(b) Convicted of a crime relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;

(c) Found by a court in a protection proceeding under chapter 74.34 RCW to have abused or financially exploited a vulnerable adult;

(d) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;

(e) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually abused or exploited any minor or to have physically abused any minor; or

(f) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor.

(10) The department may deny, suspend or revoke a license, if:

- An applicant/provider,
- A person affiliated with the applicant,
- Any person who is a caregiver,
- Any person who has unsupervised access to residents in the adult family home,
- Any person who lives in the home but who is not a resident,
- A resident manager,
- A partner of the entity,
- An officer of the entity,
- A director of the entity,
- A managerial employee of the entity,
- An entity representative,
- A spouse of the provider,
- An owner of fifty percent or more of the entity, or
- An owner who exercises control over daily operations

has:

(a) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(b) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(c) Been convicted of a felony or a crime against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;

(d) Had sanction, corrective, or remedial action taken by federal, state, county, or municipal health or safety officials related to the care or treatment of children or vulnerable adults;

(e) Engaged in or been convicted of the illegal use of drugs or the excessive use of alcohol within the past five years without evidence of rehabilitation;

(f) Been convicted of the illegal selling or distribution of drugs;

(g) Been convicted of any crime involving a firearm used in the commission of a felony or in an act of violence against a person;

(h) Operated a facility for the care of children or adults without a license;

(i) Misappropriated property of residents;

(j) Been denied a license or license renewal to operate a facility that was licensed for the care of children or vulnerable adults;

(k) Relinquished or returned a license in connection with the operation of any facility for the care of children or vulnerable adults, or did not seek the renewal of such license, following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of the license;

(l) Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the IRS or a state entity for failure to pay income or payroll taxes;

(m) Refused to permit authorized department representatives to interview residents or have access to resident records;

(n) Interfered with a long term care ombudsman in the performance of his or her official duties;

(o) Exceeded licensed capacity in the operation of an adult family home; or

(p) Been found by the court in a proceeding under Title 26 RCW to have committed an act of domestic violence toward a family or household member.

(11) The department may deny, suspend or revoke a license if:

- An applicant,
- A provider,
- A resident manager,
- A partner of the entity,
- An officer of the entity,
- A director of the entity,
- A managerial employee of the entity,
- An entity representative,
- An owner of fifty percent or more of the entity, or
- An owner who exercises control over daily operations,

Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding his/her ability to care for residents.

(12) The department shall deny an adult family home license to an applicant who is licensed to care for children in the same home unless:

(a) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(b) The applicant provides satisfactory evidence to the department of the home's capability to meet the needs of children and adults residing in the home; and

(c) The total number of persons receiving care in the home does not exceed the number permitted by the licensed capacity of the adult family home.

[Statutory Authority: RCW 70.128.040, 05-17-158, § 388-76-560, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW, 98-11-095, § 388-76-560, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230, 96-14-003 (Order 3984), § 388-76-560, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-575 Licensing of state employees.** (1) Aging and disability services administration employees and any member of an employee's household shall be prohibited from obtaining an adult family home license.

(2) Department employees and any member of the employee's household shall be prohibited from obtaining an adult family home license when the employee's duties include:

- (a) Placement of persons in a licensed adult family home; or
- (b) Authorizing payment for such persons.

[Statutory Authority: RCW 70.128.040, 05-17-158, § 388-76-575, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230, 96-14-003 (Order 3984), § 388-76-575, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-585 Change of provider or provider address.** (1) A change of provider occurs when there is a substitution of:

(a) The provider ultimately responsible for the daily operational decisions of the adult family home; or

(b) Control of an entity provider.

(2) Events which constitute a change of provider include but are not limited to the following:

(a) The form of legal organization of the provider is changed (e.g., an individual provider forms a partnership, corporation, association, or dissolution or merger of a licensed entity with another legal organization);

(b) Operational responsibilities are transferred by the initial provider to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the adult family home is also transferred;

(c) Two individuals are both licensed as a married couple to operate the adult family home and an event, such as divorce, occurs which results in only one of the individuals operating the home;

(d) If the provider is a partnership, any event occurs which dissolves the partnership;

(e) If the provider is a corporation, and the corporation:

(i) Is dissolved;

(ii) Merges with another corporation which is the survivor; or

(iii) Consolidates with one or more corporations to form a new corporation;

(f) If the provider is a corporation and, whether by a single transaction or multiple transactions within any continuous twenty-four month period, fifty percent or more of the stock is transferred to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction; or

(g) Any other event or combination of events which results in a substitution or substitution of control of the provider.

(3) An adult family home license is not transferable and is only valid for the location and provider listed on the license. A change in either the provider or the location requires a new license.

(4) The operation or ownership of an adult family home shall not be transferred until the new provider has been issued a license to operate the home. The new provider shall comply with license application requirements.

(5) The provider shall not commence operation of an adult family home at a new location until the department has approved a license for that location.

(6) The provider shall notify the adult family home's residents, in writing, at least thirty days prior to the effective date of a change of provider or location.

(7) The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law.

(8) In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license.

[Statutory Authority: RCW 70.128.040, 05-17-158, § 388-76-585, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230, 96-14-003 (Order 3984), § 388-76-585, filed 6/19/96, effective 7/20/96.]

#### **WAC 388-76-595 Inspections and ombudsman visits.**

(1) The department shall conduct unannounced inspections and complaint investigations to determine the provider's compliance with this chapter and chapter 70.128 RCW.

(2) The provider shall ensure that department staff have access to the home, residents, and all resident records therein and shall not willfully interfere or fail to cooperate with department staff in the performance of official duties. Examples of willful interference or failure to cooperate include but are not limited to, not allowing department staff to talk to residents in private, not allowing department staff entrance into the home, or not allowing department staff access to resident records.

(3) Department staff shall have access to relevant staff records which must be kept in the adult family home. Relevant staff records include: Criminal history background inquiries; tuberculosis test documentation; CPR-first-aid cards; department of health registration; fundamentals of caregiving, modified fundamentals of caregiving, nurse delegation and continuing education certificates; and any other special certificates.

(4) Within ten working days of the inspection of the adult family home, the department's inspection report will be mailed or hand delivered to the provider.

(5) Within ten calendar days of the completion of complaint investigation data collection, any department inspection report related to a complaint investigation will be mailed or hand delivered to the provider.

(6) A provider shall submit to the department the planned corrective measures for violations and/or deficiencies within ten calendar days of receipt of a statement of deficiencies or an inspection report.

(7) Upon request, the department will supply to the public copies of inspection reports and complaint investigation reports, as soon as they are completed.

(8) The department will include a copy of the provider's planned corrective measures with the inspection and complaint investigation reports, if a copy is available at the time of the request.

(9) Any written decision by the department to take an enforcement action will be immediately available to the public.

(10) Subsections (7) through (9) above are subject to applicable public disclosure and confidentiality requirements.

(11) The adult family home shall not willfully interfere with a representative of the Washington protection and advocacy system as defined under RCW 71A.10.080 or the long term care ombudsman in the performance of official duties, as defined under chapter 43.190 RCW, Long-term care ombudsman program, the state regulations for the long-term care ombudsman program, and under federal law. The department shall impose a penalty of not more than one thousand dollars for any such willful interference with a representative from the long-term care ombudsman program.

[Statutory Authority: RCW 70.128.040. 05-17-158, § 388-76-595, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW. 98-11-095, § 388-76-595, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230. 96-14-003 (Order 3984), § 388-76-595, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-655 General management and administration.** (1) The provider shall not admit or retain any resident whose needs the provider cannot meet.

(2) The provider shall ensure all of the following:

(a) That staff are competent and receive necessary training, including but not limited to any training required under chapter 388-112 WAC to perform assigned tasks;

(b) The adult family home is in compliance with the requirements of this chapter and other applicable state laws;

(c) The home employs sufficient staff to meet the needs of the residents; and

(d) That he/she is available to respond to resident needs and caregiver inquiries within a reasonable time frame. In the event a provider is unavailable (including but not limited to being on vacation), a person must be designated to respond on behalf of the provider.

(3) The provider shall ensure that all caregivers are at least eighteen years of age or older.

(4) The provider shall ensure that the provider, entity representative, resident manager and all caregivers:

(a) Are able to communicate or make provisions for communicating with the resident in his or her primary language;

(b) Have a clear understanding of job responsibilities and knowledge of residents' negotiated care plans in order to be able to provide care specific to each resident's needs; and

(c) Not engage in the illegal use of drugs or the excessive use of alcohol when providing care to residents; and

(d) Possess a valid first-aid and CPR card prior to providing care for residents unless such care is directly supervised by a fully qualified caregiver who has a valid first-aid and CPR card.

(5) The provider shall ensure that:

(a) There is at least one caregiver present in the home whenever one or more residents are on the premises;

(b) The caregiver referred to in (a) of this subsection is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations; and

(c) At least one caregiver is accessible by phone or beeper for emergencies when there are no residents on the home's premises.

(6) An adult family home shall be exempt from subsection (5)(a) of this section if:

(a) The home provides care to residents whose primary disabilities are developmental disabilities as defined by WAC 388-76-540; and

(b) It is determined and documented in a resident's current negotiated care plan that the resident is capable and willing to be left alone unsupervised in the adult family home during normal awake hours. The maximum period of time a resident can be left alone must be documented in the negotiated care plan.

[Statutory Authority: RCW 70.128.040. 05-17-158, § 388-76-655, filed 8/22/05, effective 9/22/05; 03-14-018, § 388-76-655, filed 6/19/03, effective 7/20/03. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-065, § 388-76-655, filed 7/11/02, effective 8/11/02. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW. 98-11-095, § 388-76-655, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230. 96-14-003 (Order 3984), § 388-76-655, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-685 Criminal history disclosure and background inquiries.** (1) Before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member unsupervised access to residents, the home shall:

(a) Require the person to complete the residential care services background inquiry form which includes:

(i) A disclosure statement; and

(ii) A statement authorizing the adult family home, the department, and the Washington state patrol to conduct a background inquiry;

(b) Verbally inform the person:

(i) That he or she may request a copy of the background inquiry result; and

(ii) Of the inquiry result within ten days of receipt; and

(c) Notify the appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(2) The adult family home provider shall not employ any person, directly or by contract, or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member unsupervised access to residents if the person or background inquiry discloses that the person was:

(a) Convicted of a crime against persons as defined under RCW 43.43.830;

(b) Convicted of a crime related to financial exploitation as defined under RCW 43.43.830;

(c) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

(d) Subject to an order of protection under chapter 74.34 RCW for abuse, neglect, abandonment or financial exploitation of a vulnerable adult;

(e) Found in a final decision issued by a disciplinary board to have:



(i) Sexually or physically abused or exploited any minor or developmentally disabled person; or

(ii) Abused, neglected, abandoned or financially exploited any vulnerable adult; or

(f) Found in any dependency action under RCW 13.34.-050(1) to have engaged in circumstances of sexual abuse or exploited any minor or to have physically abused any minor.

(3) The adult family home may choose to employ a person with a conviction of a crime only if the conviction is one of the crimes listed in RCW 43.43.842 and the required number of years has passed.

(4) An adult family home may conditionally employ a person pending the result of a background inquiry, provided the home requests the inquiry within seventy-two hours of the conditional employment.

(5) A background inquiry result is valid for two years from the date it is conducted, at which point a new background inquiry application must be submitted.

(6) The adult family home shall establish procedures ensuring:

(a) All disclosure statements and background inquiry applications and responses and all copies are maintained in a confidential and secure manner;

(b) All background inquiry results and disclosure statements are used for employment purposes only;

(c) Background inquiry results and disclosure statements are not disclosed to any person except:

(i) The person about whom the adult family home made the disclosure or background inquiry;

(ii) Authorized state and federal employees; and

(iii) The Washington state patrol auditor.

(7) A record of inquiry results shall be retained by the adult family home for eighteen months beyond the date of employment termination.

(8) The provider shall secure and submit any additional documentation and information as requested by the department to satisfy the requirements of this section.

[Statutory Authority: RCW 70.128.040, 05-17-158, § 388-76-685, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW, 98-11-095, § 388-76-685, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230, 96-14-003 (Order 3984), § 388-76-685, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-715 Dispute resolution.** (1) When a provider disagrees with the department's finding of a violation under this chapter, the provider shall have the right to have the violation reviewed by the department under the department's dispute resolution process. The purpose of the review is to give the provider an opportunity to present information which might warrant modification or deletion of a finding of a violation. The provider may submit a written statement for review. In addition to a written statement, the provider may request to present the information in person to a department designee. Requests for review shall be made to the department at the address provided in the department's certified letter within ten days of receipt of the written finding of a violation.

(2) When requested by a provider, the department shall expedite the dispute resolution process to review violations

upon which a department order imposing license suspension, stop placement, or a condition on a license is based.

(3) Orders of the department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution.

[Statutory Authority: RCW 70.128.040, 05-17-158, § 388-76-715, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230, 96-14-003 (Order 3984), § 388-76-715, filed 6/19/96, effective 7/20/96.]

**WAC 388-76-76505 What physical structure requirements must the provider ensure that the home meets?** (1) Each adult family home must meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family dwelling.

(2) It is the responsibility of the provider to check with local authorities to ensure all local codes are met.

(3) Effective July 1, 2004, the following adult family homes must meet requirements in WAC 51-51-0324 Section R324, Adult family homes as established by the Washington state building code council:

(a) Any single-family dwelling that has been newly constructed meeting all current applicable building codes, that has never been occupied, and that has a pending adult family home license application with the department;

(b) Any single-family dwelling being converted for use as an adult family home.

(4) WAC 51-51-0324 Section R324 - Adult family homes does not apply to adult family homes licensed before July 1, 2004, that are being sold or transferred for the purpose continuing the operation of a licensed adult family home under new ownership.

(5) Windows in every room used by residents must be free of obstructions.

(6) When resident bedroom windows are fitted with storm windows, the provider must equip the storm windows with release mechanisms that are easily opened from the inside without the use of a key or special knowledge or effort.

(7) The provider must ensure that every occupied area used by residents receiving care and services has access to one or more exit and must not pass through a room, garage, or other space subject to being locked or blocked from the opposite side.

(8) Every occupied area used by residents must not be accessible only by ladder, folding stairs, or trap door.

(9) The provider must ensure that every bathroom door lock opens from the outside in an emergency.

(10) The provider must ensure that every closet door opens from the inside and outside.

(11) The provider must ensure that exit doors leading to the outside will open from the inside without the use of a key or any special knowledge or effort.

[Statutory Authority: RCW 70.128.040 and chapter 70.128 RCW, 05-07-137, § 388-76-76505, filed 3/22/05, effective 4/22/05. Statutory Authority: RCW 70.128.040, 70.128.130, and 70.128.140, 02-20-004, § 388-76-76505, filed 9/18/02, effective 10/19/02.]

**Chapter 388-78A WAC**  
**BOARDING HOME LICENSING RULES**  
 (Formerly chapter 246-316 WAC)

**WAC**

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**WAC 388-78A-2020 Definitions. "Abandonment"** means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resi-

dent to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another;

(5) **"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

**"Activities of daily living"** means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

**"Adult day services"** means care and services provided to individuals on the boarding home premises for a period of less than twenty-four continuous hours and does not involve an overnight stay.

**"Ambulatory"** means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

**"Applicant"** means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

**"Basic services"** means housekeeping services, meals, nutritious snacks, laundry, and activities.

**"Bathing fixture"** means a bathtub, shower or sit-down shower.

**"Bathroom"** means a room containing at least one bathing fixture.

**"Boarding home"** means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

**"Building code"** means the building codes and standards adopted by the Washington state building code council.

**"Caregiver"** means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly super-

vised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

**"Construction review services"** means the office of construction review services within the Washington state department of health.

**"Continuing care contract"** means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

**"Continuing care retirement community"** means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

**"Contractor"** means an agency or person who contracts with a licensee to provide resident care, services or equipment.

**"Crimes relating to financial exploitation"** means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

**"Department"** means the Washington state department of social and health services.

**"Dietitian"** means an individual certified under chapter 18.138 RCW.

**"Document"** means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

**"Domiciliary care"** means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

**"Enforcement remedy"** means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

**"Food service worker"** means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

**"General responsibility for the safety and well-being of the resident"** means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

**"Harm"** means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

**"Health support services"** means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

**"Independent living unit"** means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

**"Independent senior housing"** means an independent living unit occupied by an individual or individuals sixty or more years of age.

**"Infectious"** means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

**"Licensee"** means the person, as defined in this chapter, to whom the department issues the boarding home license.

**"Licensed resident bed capacity"** means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

**"Majority owner"** means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

**"Manager"** means the person defined in this chapter, providing management services on behalf of the licensee.

**"Management agreement"** means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

**"Maximum facility capacity"** means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is a least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

**"Medication organizer"** means a container with separate compartments for storing oral medications organized in daily doses.

**"Medication service"** means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

**"Neglect"** means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

**"Nonresident individual"** means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g), but may not receive domiciliary care as defined in this section, directly or indirectly by the facility, and may not receive the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section.

**"Nonpractitioner"** means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

**"Nurse"** means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

**"Over-the-counter (OTC) medication"** means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

**"Person"** means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

**"Physician"** means an individual licensed under chapter 18.57 or 18.71 RCW.

**"Practitioner"** includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

**"Prescribed medication"** means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Prescriber"** means a health care practitioner authorized by Washington state law to prescribe drugs.

**"Problem"** means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;  
or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

**"Prospective resident"** means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

**"Reasonable accommodation"** and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"RCW"** means Revised Code of Washington.

**"Records"** means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

**"Resident"** means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the resident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

**"Resident's representative"** means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

**"Respite care"** means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

**"Restraint"** means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

**"Room"** means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

**"Significant change"** means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

**"Special needs"** means a developmental disability, mental illness, or dementia.

**"Staff person"** means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

**"State fire marshal"** means the director of fire protection under the direction of the chief of the Washington state patrol.

**"Toilet"** means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

**"Volunteer"** means an individual who interacts with residents without reimbursement.

**"Vulnerable adult"** means "vulnerable adult" as defined in chapter 74.34 RCW. For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

**"WAC"** means Washington Administrative Code.

**"WISHA"** means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2020, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2020, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2050 Resident characteristics.** The boarding home may admit and retain an individual as a resident in a boarding home only if:

(1) The boarding home can safely and appropriately serve the individual with appropriate available staff providing:

(a) The scope of care and services described in the boarding home's disclosure information, except if the boarding home chooses to provide additional services consistent with RCW 18.20.300(4); and

(b) The reasonable accommodations required by state or federal law, including providing any specialized training to caregivers that may be required according to WAC 388-78A-2490 through 388-78A-2510;

(2) The individual does not require the frequent presence and frequent evaluation of a registered nurse, excluding those individuals who are receiving hospice care or individuals who have a short-term illness that is expected to be resolved within fourteen days as long as the boarding home has the capacity to meet the individual's identified needs; and

(3) The individual is ambulatory, unless the boarding home is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2050, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2050, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2100 On-going assessments.** The boarding home must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2100, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2100, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2120 Monitoring residents' well-being.** The boarding home must:

(1) Observe each resident consistent with his or her assessed needs and negotiated service agreement;

(2) Identify any changes in the resident's physical, emotional, and mental functioning that are a:

(a) Departure from the resident's customary range of functioning; or

(b) Recurring condition in a resident's physical, emotional, or mental functioning that has previously required intervention by others.

(3) Evaluate, in order to determine if there is a need for further action:

(a) The changes identified in the resident per subsection (2) of this section; and

(b) Each resident when an accident or incident that is likely to adversely affect the resident's well-being, is observed by or reported to staff persons.

(4) Take appropriate action in response to each resident's changing needs.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2120, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2120, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2270 Resident controlled medications.** (1) The boarding home must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The boarding home must allow a resident to control and secure the medications that he or she self-administers or self-administers with assistance if the boarding home assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2270, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c

142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2270, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2280 Medication organizers.** (1) The boarding home must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(2) The boarding home must ensure that any nurse who fills a medication organizer for a resident labels the medication organizer with:

- (a) The name of the resident;
- (b) The name of the medications in the organizer; and
- (c) The frequency of the dosage.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2280, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2280, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2300 Food and nutrition services.** (1) The boarding home must:

- (a) Provide a minimum of three meals a day:
  - (i) At regular intervals;
  - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack after the evening meal and before breakfast.
- (b) Provide sufficient time and staff support for residents to consume meals;
- (c) Ensure all menus:
  - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;
  - (ii) Indicate the date, day of week, month and year;
  - (iii) Include all food and snacks served that contribute to nutritional requirements;
  - (iv) Are kept at least six months;
  - (v) Provide a variety of foods; and
  - (vi) Are not repeated for at least three weeks, except that breakfast menus in boarding homes that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.
- (d) Prepare on-site, or provide through a contract with a food service establishment located in the vicinity and that meets the requirements of chapter 246-215 WAC, palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council, adjusted for:
  - (i) Age, gender and activities, unless medically contraindicated; and
  - (ii) Individual preferences to the extent reasonably possible.
- (e) Substitute foods, when changes in the current day's menu are necessary, of equal nutrient value and record changes on the original menu;
- (f) Make available and known to residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The boarding home is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(g) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(h) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The boarding home must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The boarding home must ensure the diet manual is:

- (i) Available to and used by staff persons responsible for food preparation;
- (ii) Approved by a dietitian; and
- (iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The boarding home may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

- (a) Modified or therapeutic diets;
- (b) Nutritional concentrates or supplements.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2300, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2300, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2305 Food sanitation.** The boarding home must:

(1) Manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service;

(2) Ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC; and

(3) Ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:

- (a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;
- (b) The resident is paid for helping to prepare food; or
- (c) The resident is preparing food to be served to other residents as part of an employment-training program.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2305, filed 12/15/05, effective 1/15/06.]

**WAC 388-78A-2360 Adult day services.** (1) The boarding home may, but is not required to, provide an adult day services program for nonresidents.

(2) If adult day services are provided, the boarding home must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

(b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to boarding home residents;

(c) Ensure the total number of residents plus adult day services clients does not exceed the boarding home's maximum facility capacity;

(d) Only accept adult day services clients who are appropriate for boarding home care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;

(g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC 388-78A-2700;

(h) Maintain a separate register of adult day services clients; and

(i) Maintain a record for each adult day services client.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2360, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2360, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2380 Restricted egress.** A boarding home must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

(1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.

(2) Each resident assessed as being cognitively and physically able to safely leave the boarding home is able to do so independently without restriction.

(3) Each resident, assessed as being cognitively able to safely leave the boarding home and who has physical challenges that make exiting difficult, is able to leave the boarding home when the resident desires and in a manner consistent with the resident's negotiated service agreement.

(4) Each resident who is assessed as being unsafe to leave the boarding home unescorted is able to leave the boarding home consistent with his or her negotiated service agreement.

(5) Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.

(6) Installation of special egress control devices in all proposed construction issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must conform to standards adopted by the state building code council.

(7) Installation of special egress control devices in all construction issued a project number by construction review services before September 1, 2004 for construction related to this section, must conform to the following:

(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.

(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:

(i) The egress control device itself;

(ii) The smoke detection system; or

(iii) The means of egress illumination.

(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.

(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.

(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.

(f) The unlatching must not require more than one operation.

(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:

"Keep pushing. The door will open in fifteen seconds. Alarm will sound."

The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.

(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.

(8) The boarding home must have a system in place to inform and permit visitors, staff persons and appropriate residents how they can exit without sounding the alarm.

(9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:

(a) Is accessible to residents without staff assistance;

(b) Is surrounded by walls or fences at least seventy-two inches high;

(c) Has areas protected from direct sunshine and rain throughout the day;

(d) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers; and

(e) Has suitable outdoor furniture.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2380, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2380, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2470 Criminal history background checks.** (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

(a) Employees;

(b) Managers;

(c) Volunteers who are not residents;

(d) Contractors; and

(e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records,



pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

- (i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;
- (ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;
- (iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;
- (iv) The subject in a protective proceeding under chapter 74.34 RCW;
- (v) Convicted of criminal mistreatment; or
- (vi) Found by the department to have abused, neglected, or exploited a minor or vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

- (A) All crimes against children or their persons;
- (B) All crimes relating to financial exploitation; and
- (C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

- (i) To make the disclosures in writing;
- (ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and
- (iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to any individual except:

(i) The individual named on the background check result;

(ii) Authorized state and federal employees;

(iii) The Washington state patrol auditor; and

(iv) As otherwise authorized in chapter 43.43 RCW.

(d) Retained and available for department review:

(i) During the individual's employment or association with a facility; and

(ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2470, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2470, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2480 TB tests.** (1) The boarding home must ensure each staff person, except for volunteers and contractors, is screened for tuberculosis, as follows:

(a) Except when a staff person provided the boarding home with documentation of a previous positive Mantoux skin test, a staff person hired before September 1, 2004 must have had:

(i) A tuberculin skin test by the Mantoux method within six months preceding the date of employment in the boarding home; and

(ii) A second tuberculin skin test within one to three weeks after a negative Mantoux test if the staff person was thirty-five years of age or older at the time of hiring.

(b) A staff person hired on or after September 1, 2004 must have a baseline two-step skin test initiated within three days of being hired unless the staff person meets the requirements in (c) or (d) of this subsection. The skin tests must be:

(i) Given no less than one and no more than three weeks apart;

(ii) By intradermal (Mantoux) administration of purified protein derivative (PPD);

(iii) Read between forty-eight and seventy-two hours following administration, by trained personnel; and

(iv) Recorded in millimeters of induration.

(c) A staff person needs to have only a one-step skin test within three days of being hired if:

(i) There is documented history of a negative result from previous two-step testing; or

(ii) There was a documented negative result from one-step skin testing in the previous twelve months.

(d) A staff person does not need to be skin tested for tuberculosis if he/she has:

(i) Documented history of a previous positive skin test consisting of ten or more millimeters of induration; or

(ii) Documented evidence of adequate therapy for active disease; or

(iii) Documented evidence of adequate preventive therapy for infection.

(d) If a skin test results in a positive reaction, the boarding home must:

(i) Ensure that the staff person has a chest X ray within seven days;

(ii) Report positive chest X rays to the appropriate public health authority; and

(iii) Follow precautions ordered by a physician or public health authority.

(2) The boarding home must:

(a) Keep in the boarding home for the duration of the staff person's employment, and at least two years following termination of employment, records of:

(i) Tuberculin test results;

(ii) Reports of X-ray findings; and

(iii) Physician or public health official orders.

(b) Provide staff persons with a copy of the records specified in (a) of this subsection:

(i) During the time the staff person is employed in the boarding home, limited to one copy per report; and

(ii) When requested by the staff person.

(3) The boarding home must ensure that caregivers caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2480, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2480, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2490 Specialized training for developmental disabilities.** (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.

(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2490, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2490, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2500 Specialized training for mental illness.** (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

(a) Who has received the diagnosis or treatment within the previous two years; and

(b) Whose diagnosis was made by, or treatment provided by, one of the following:

(i) A licensed physician;

(ii) A mental health professional;

(iii) A psychiatric advanced registered nurse practitioner; or

(iv) A licensed psychologist.

(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2500, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2500, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2510 Specialized training for dementia.** (1) The boarding home must provide caregivers with spe-

cialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2510, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2510, filed 7/30/04, effective 9/1/04.]

### **WAC 388-78A-2520 Administrator qualifications.**

(1) The licensee must appoint an administrator who is at least twenty-one years old and who is not a resident, and is qualified to perform the administrator's duties specified in WAC 388-78A-2560.

(2) The licensee must only appoint as a boarding home administrator an individual who meets at least one of the following qualifications listed in (a) through (f) of this subsection:

(a) The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;

(b) The individual holds a current Washington state nursing home administrator license in good standing;

(c) Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (c)(i) and (ii) of this subsection:

(i) Obtained certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training or certification of passing an administrator examination, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

(C) The American Health Care Association; or

(D) The Assisted Living Federation of America; or

(E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Three years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(d) The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (d)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

(C) The American Health Care Association; or

(D) The Assisted Living Federation of America; or

(E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has two years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(e) The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (e)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

(C) The American Health Care Association; or

(D) The Assisted Living Federation of America; or

(E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has one year paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a

recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(f) Before assuming duties as an administrator, the individual has five years of paid experience:

(i) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2520, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2520, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2660 Resident rights.** The boarding home must:

(1) Comply with chapter 70.129 RCW, Long-term care resident rights;

(2) Ensure all staff persons provide care and services to each resident consistent with chapter 70.129 RCW;

(3) Not use restraints on any resident;

(4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;

(5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision making, including chapters 7.70, 70.122, 11.88, 11.92, and 11.94 RCW;

(6) Reasonably accommodate residents consistent with applicable state and/or federal law; and

(7) Not allow any staff person to abuse or neglect any resident.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2660, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2660, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2700 Safety measures and disaster preparedness.** (1) The boarding home must take necessary action to promote the safety of each resident whenever the resident is on the boarding home premises or under the supervision of staff persons, consistent with the resident's negotiated service agreement.

(2) The boarding home must:

(a) Maintain the premises free of hazards;

(b) Maintain any vehicles used for transporting residents in a safe condition;

(c) Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The boarding home must:

(i) Determine the circumstances of the event;

(ii) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(iii) Protect other residents during the course of the investigation.

(d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;

(e) Provide, and tell staff persons of, a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;

(f) Provide emergency lighting or flashlights in all areas of the boarding home. For all boarding homes first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide emergency lighting in all areas of the boarding home;

(g) Make sure first-aid supplies are:

(i) Readily available and not locked;

(ii) Clearly marked;

(iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

(h) Make sure first-aid supplies are appropriate for:

(i) The size of the boarding home;

(ii) The services provided;

(iii) The residents served; and

(iv) The response time of emergency medical services.

(i) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to:

(i) On-duty staff persons' responsibilities;

(ii) Provisions for summoning emergency assistance;

(iii) Plans for evacuating residents from area or building;

(iv) Alternative resident accommodations;

(v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and

(vi) Emergency communication plan.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2700, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2700, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2910 Applicable building codes.** (1) Newly licensed boarding homes and construction in existing boarding homes must meet the requirements of all the current building codes and applicable sections of this chapter.

(2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their initial licensing.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2910, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2910, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2920 Area for nursing supplies and equipment.** (1) If the boarding home provides intermittent nursing services, the boarding home must provide on the boarding home premises for the safe and sanitary:

(a) Storage and handling of clean and sterile nursing equipment and supplies; and

(b) Cleaning and disinfecting of soiled nursing equipment.

(2) For all boarding homes first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, in which intermittent nursing services are provided, or upon initiating intermittent nursing services within an existing boarding home, the boarding home must provide the following two separate rooms in each boarding home building, accessible only by staff persons:

(a) A "clean" utility room for the purposes of storing and preparing clean and sterile nursing supplies, equipped with:

- (i) A work counter or table;
- (ii) A handwashing sink, with soap and paper towels or other approved hand-drying device; and
- (iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-2260.

(b) A "soiled" utility room for the purposes of storing soiled linen, cleaning and disinfecting soiled nursing care equipment, and disposing of refuse and infectious waste, equipped with:

- (i) A work counter or table;
- (ii) A two-compartment sink for handwashing and equipment cleaning and sanitizing;
- (iii) A clinical service sink or equivalent for rinsing and disposing of waste material;
- (iv) Soap and paper towels or other approved hand-drying device; and
- (v) Locked storage for cleaning supplies, if stored in the area.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2920, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2920, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2930 Communication system.** (1) The boarding home must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance:

- (i) From resident units;
- (ii) From common areas accessible to residents;
- (iii) From corridors accessible to residents; and
- (iv) For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, all bathrooms, all toilet rooms, resident living rooms and sleeping rooms.

(b) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The boarding home must provide one or more non-pay telephones:

(a) In each building located for ready access by staff persons; and

(b) On the premises with reasonable access and privacy by residents.

(3) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must equip each resident room with two telephone lines.

(4) If a boarding home that is issued a project number by construction services on or after September 1, 2004 chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

(a) Whether or not announcements are broadcast into the resident's room; and

(b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2930, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2930, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2940 Two-way intercom systems.** The boarding home may use a two-way intercom system between staff persons and residents in other rooms only when:

- (1) A resident initiates the contact; or
- (2) Staff persons announce to the resident that the intercom has been activated at the time it is activated, and:

(a) The resident and any others in the room agree to continue the contact;

(b) The boarding home deactivates the intercom when the conversation is complete; and

(c) The boarding home ensures each resident is aware the intercom is operating at all times the intercom is in use in the resident's room.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2940, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2940, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2960 Sewage and liquid waste disposal.** The boarding home must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2960, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2960, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2990 Heating-cooling—Temperature.** The boarding home must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F per the building code. The boarding home must:

(a) Maintain the boarding home at a minimum temperature of 60°F during sleeping hours; and

(b) Maintain the boarding home at a minimum of 68°F during waking hours, except in rooms:

(i) Designated for activities requiring physical exertion; or

(ii) Where residents can individually control the temperature in their own living units, independent from other areas.

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of main-

taining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F for one hundred seventy-five hours per year or two percent of the time, as specified in the latest edition of *"Recommended Outdoor Design Temperatures—Washington State,"* published by the Puget Sound chapter of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) Equip each boarding home issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; and

(5) Equip each resident sleeping room and resident living room in boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with individual temperature controls located between thirty and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60°F to maximum 85°F.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2990, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2990, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-3010 Resident room—Room furnishings-storage.** (1) The boarding home must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the boarding home was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the boarding home, after June 30, 1989:

(A) Applied for initial licensure; or

(B) Applied to increase the number of resident sleeping rooms; or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common-use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the boarding home was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(i) In all boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, and when requested by a resident in a boarding home licensed on or before September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;

(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;

(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.

(2) The boarding home must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame;

(ii) Is in good condition; and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(c) One or more comfortable pillows for each resident;

(d) Bedding for each bed, in good repair; and

(e) Lighting at the resident's bedside when requested by the resident.

(3) The boarding home must not allow a resident sleeping room to be used as a passageway or corridor.

(4) The boarding home may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(5) The boarding home must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean a boarding home is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-3010, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-3010, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-3030 Toilet rooms and bathrooms. (1)**

The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

(a) Toilet with a clean, nonabsorbent seat free of cracks;

(b) Handwashing sink in or adjacent to the toilet room.

For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents or fraction as listed in the following table:

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23

\*When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents or fraction thereof as listed in the following table:

Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure fifty percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One-half inch or less threshold;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

[Statutory Authority: RCW 18.20.090, 06-01-047, § 388-78A-3030, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-3030, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-3040 Laundry.** (1) The boarding home must provide laundry and linen services on the premises, or by commercial laundry.

(2) The boarding home must handle, clean, and store linen according to acceptable methods of infection control. The boarding home must:

(a) Provide separate areas for handling clean laundry and soiled laundry;

(b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;

(c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; and

(d) Ensure all staff persons wear gloves and uses other appropriate infection control practices when handling soiled laundry.

(3) The boarding home must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, or that automatically dispense a chemical sanitizer as specified by the manufacturer, whenever the boarding home washes:

(a) Boarding home laundry;

(b) Boarding home laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(4) The boarding home or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at temperatures below 140°F and without the use of a chemical sanitizer.

(5) The boarding home must ventilate laundry rooms and areas to the outside of the boarding home, including areas or rooms where soiled laundry is held for processing by off site commercial laundry services.

(6) The boarding home must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) For all boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide a laundry area where residents' may do their personal laundry that is:

(a) Equipped with:

(i) A utility sink;

(ii) A table or counter for folding clean laundry;

(iii) At least one washing machine and one clothes dryer; and

(iv) Mechanical ventilation to the outside of the boarding home.

(b) Is arranged to reduce the chances of soiled laundry contaminating clean laundry.

(8) The boarding home may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-3110.

(9) The boarding home may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-3120.

[Statutory Authority: RCW 18.20.090, 06-01-047, § 388-78A-3040, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-3040, filed 7/30/04, effective 9/1/04.]

#### **WAC 388-78A-3090 Maintenance and housekeeping.**

(1) The boarding home must:

(a) Provide a safe, sanitary and well-maintained environment for residents;

(b) Keep exterior grounds, boarding home structure, and component parts safe, sanitary and in good repair;

(c) Keep facilities, equipment and furnishings clean and in good repair;

(d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition; and

(e) Equip a housekeeping supply area on the premises with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;

(ii) Storage for wet mops, ventilated to the outside of the boarding home; and

(iii) Locked storage for cleaning supplies.

(2) For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide housekeeping supply room(s):

(a) Located on each floor of the boarding home, except only one housekeeping supply room is required for boarding homes licensed for sixteen or fewer beds when there is a means other than using a stairway, for transporting mop buckets between floors;

(b) In proximity to laundry and kitchen areas; and

(c) Equipped with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;

(ii) Storage for wet mops;



- (iii) Locked storage for cleaning supplies; and
- (iv) Mechanical ventilation to the outside of the boarding home.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-3090, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-3090, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.** (1) The department must deny, suspend, revoke or refuse to renew a boarding home license if any person described in subsection (2) of this section who has unsupervised access to residents, is:

(a) Convicted of a crime against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or

(b) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult; or

(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or

(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW.

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant;

(i) Who is involved in the operation of the boarding home; or

(ii) Who may have direct access to the boarding home residents; or

(iii) Who controls or supervises the provision of care or services to the boarding home residents; or

(iv) Who exercises control over daily operations.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-3190, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-3190, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-3220 Appeal rights.** (1) An applicant or boarding home:

(a) May contest an enforcement remedy imposed by the department pursuant to RCW 18.20.190 according to the provisions of chapter 34.05 RCW and chapters 10-08 and 388-02 WAC;

(b) Must file any request for an adjudicative proceeding with the office of administrative hearings at the mailing

address specified in the notice of imposition of an enforcement remedy within twenty-eight days of receiving the notice.

(2) Orders of the department imposing licensing suspension, stop-placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

[Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-3220, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-3220, filed 7/30/04, effective 9/1/04.]

## Chapter 388-101 WAC

### CERTIFIED COMMUNITY RESIDENTIAL SERVICES AND SUPPORTS

#### WAC

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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-101-2310 What training is required before staff are qualified to perform delegated tasks? [05-05-077, recodified as § 388-101-2310, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-740, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2410.  
 388-101-2320 Do nursing assistants need to comply with department of health requirements? [05-05-077, recodified as § 388-101-2320, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-750, filed 10/26/01, effective 1/1/02.] Decodified by 05-07-138, filed 3/22/05, effective 3/22/05. Recodified as WAC 388-101-2420.

**WAC 388-101-1010 What is the purpose of this chapter?** (1) This chapter establishes standards for the department of social and health services (DSHS) to provide, or contract to provide, individualized community residential services to clients who:

(a) Are eligible to receive services by the division of developmental disabilities (DDD); and  
 (b) Receive support from certified service providers.

(2) Service providers support eligible clients to enable them to:

(a) Enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington; and  
 (b) Participate in community life and have control of their environment to the greatest extent possible.

(3) The authority for this chapter is Title 71A RCW.

[05-05-077, recodified as § 388-101-1010, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-010, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-010, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapters 18.88A and 71A.12 RCW. 96-10-076 (Order 3978), § 275-26-010, filed 5/1/96, effective 6/1/96. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-010, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-010, filed 2/9/83.]

**WAC 388-101-1020 What definitions apply to this chapter?** "Agency" refers to an entity interested in becoming a service provider that offers residential instruction and support services to clients.

"ADSA" refers to aging and disability services administration at DSHS. Residential care services and the division of developmental disabilities are divisions under aging and disability services.

"Certification" refers to the determination by RCS that an agency or service provider has satisfactorily complied with the requirements outlined in this chapter and in the department contract.

"Client" refers to a person who has a developmental disability and is eligible under RCW 71A.10.020. (For eligi-

bility criteria, see chapter 388-825 WAC and WAC 388-101-1210.)

**"Client services"** refers to instruction and support activities that benefit clients, as specified under WAC 388-101-1800 through 388-101-1860.

**"Community protection services"** (community protection intensive supported living services, or CP-ISLS) refers to intensive supported living services provided to clients who meet the criteria of "Individual with Community Protection Issues."

**"Crisis diversion services (CDS)"** refers to DDD-authorized crisis residential services and supports offered to clients on a temporary basis. These clients show a serious decline in mental functioning, making the client at risk for psychiatric hospitalization (see WAC 388-101-1200 and 388-101-1250 for details).

**"Crisis service plan"** refers to a document that identifies needs and services a client will receive while placed in crisis diversion services.

**"DDD"** refers to the division of developmental disabilities of aging and disability services administration (ADSA).

**"DSHS"** refers to the department of social and health services of Washington state.

**"Exceptions"** refers to residential care services' (RCS) approval of a written request for an exception to a rule in this chapter. (There are no exceptions to RCWs.)

**"Group home"** refers to residential services provided in a dwelling that is:

- (1) Owned, leased, or rented by an entity other than the client;
  - (2) Licensed by the applicable state authority; and
  - (3) Operated by a provider.
- (See WAC 388-101-1260 for further details.)

**"Group training home"** refers to a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"HCBS"** refers to home and community based services waivers. This is a Title XIX Medicaid waiver program that serves a specific number of individuals. This waiver is for particular home and community based services not covered under the Medicaid state plan. (See WAC 388-825-170 for more details.)

**"IFP"** refers to individual financial plan. (See WAC 388-101-2070.)

**"IISP"** refers to the individual instruction and support plan for clients. (See WAC 388-101-2010 through 388-101-2030.)

**"Individual with community protection issues"** refers to a client identified by DDD as needing one or more of the following criteria:

- (1) The person has been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW, including, but not limited to, rape, statutory rape, rape of a child, and child molestation;
- (2) The person has been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization;

(3) The person has been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger;

(4) The person has not been convicted and/or charged, but has a history of stalking, sexually violent, predatory, and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence;

(5) The person has committed one or more violent crimes, such as murder, attempted murder, arson, first degree assault, kidnapping, or use of a weapon to commit a crime.

**"Initial assessment"** refers to a written evaluation that identifies a client's needs upon entry into crisis diversion services.

**"Instruction"** refers to goal-oriented teaching that is designed for acquiring and enhancing skills.

**"ISP"** refers to the individual service plan for clients. (See WAC 388-101-1870 through 388-101-1900.)

**"Nursing assistant"** refers to a person who is registered or certified by department of health under chapter 18.88A RCW. A nursing assistant performs certain nursing care tasks that are delegated by a registered nurse for a specific client in authorized settings. (See chapter 246-841 WAC for more details.)

**"POC"** refers to the plan of care for clients based on the criteria of the home and community based waivers. (See WAC 388-101-1870 through 388-101-1900.)

**"RCS"** refers to residential care services of aging and disability services (ADSA).

**"Regional support network (RSN)"** refers to a county, combination of counties or other member entities under contract with DSHS mental health division (MHD). These RSNs administer all mental health service activities within their jurisdiction, using available resources. (See WAC 388-865-200 for details.)

**"Reprisal"** refers to any negative action taken as retaliation against an employee.

**"Residential service"** refers to client services offered by certified service providers.

**"Secretary"** refers to the secretary of the department of social and health services or the secretary's designee.

**"Service provider"** refers to an agency RCS has certified and DDD has contracted to provide residential services to clients. Also refers to state operated living alternative (SOLA) program.

**"Severity"** refers to the seriousness of an incident. This is determined by the extent to which a client's physical, mental, or psychosocial well-being is or may be compromised or threatened.

**"SSP" (state supplemental payment)** refers to DDD administered state paid cash assistance program for certain clients of DDD. (See chapter 388-827 WAC for details.)

**"Support"** refers to assistance as requested or needed by a client, based on their abilities, needs, and goals.

**"Supported living"** refers to residential services provided to clients living in their own homes, which are owned, rented, or leased by the clients or their legal representatives. (See WAC 388-101-1240 for more details.)

**"Trust account"** refers to a bank account containing two or more clients' funds where the service provider has the authority to make deposits and withdrawals.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1020, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1020, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-020, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-020, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-020, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-020, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-020, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 86-08-003 (Order 2349), § 275-26-020, filed 3/20/86; 83-05-017 (Order 1945), § 275-26-020, filed 2/9/83.]

**WAC 388-101-1100 What abuse and neglect reporting requirements must service providers meet?** (1) Under chapter 74.34 RCW, all administrators, owners, staff and volunteers are mandated to report instances of suspected client abuse, neglect, exploitation, or mistreatment.

(2) Reports must be made to one of two different areas at DSHS:

(a) Service providers giving supported living services must report to adult protective services (APS); and

(b) Service providers giving services through group homes must report to residential care services (RCS).

(3) Reports must be made to law enforcement agencies, when appropriate.

(4) Service providers must have policies and procedures complying with state law that specify reporting requirements for client abuse, neglect, exploitation, or mistreatment.

(5) Each administrator, owner, staff person, and volunteer must read and sign the policy about reporting requirements. The service provider must retain the signed policy for staff and volunteers.

[05-05-077, recodified as § 388-101-1100, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-440, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-440, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1180 What are residential services?** Residential services are instructions and supports provided to eligible clients by service providers to enable clients to live in their community. These may include:

- (1) Supported living services;
- (2) Group home services; or
- (3) Services provided in the group training home.

Residential services must follow the requirements outlined in this chapter. The client rights set forth in this chapter are the minimal rights guaranteed to all clients of certified residential services, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights.

[05-05-077, recodified as § 388-101-1180, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-030, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-030, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-030, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-022, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. 90-04-074 (Order 2997), § 275-26-022, filed 2/5/90, effective 3/1/90. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-022, filed 2/9/83.]

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**WAC 388-101-1190 Who certifies residential services?** Residential services are certified by RCS.

[05-05-077, recodified as § 388-101-1190, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-040, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-040, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-040, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-050, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-050, filed 2/9/83.]

**WAC 388-101-1200 Where are residential services provided?** (1) Service providers may offer residential services in:

- (a) The client's own home;
- (b) Group homes; or
- (c) The group training home.

(2) Residential services must be located in a residential neighborhood within reasonable distance of necessary resources, unless a client chooses to live in a remote area. Resources include stores, banks, laundromats, churches, job opportunities, and other public services.

(a) **Exception:** Group homes certified prior to 1983 do not need to follow this requirement.

(b) **Exception:** Clients who receive community protection services may not need to follow this requirement.

[05-05-077, recodified as § 388-101-1200, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-050, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-050, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-050, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-060, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-060, filed 2/9/83.]

**WAC 388-101-1205 Where are crisis diversion services provided?** Crisis diversion services may be provided in either:

- (1) A single person dwelling that is maintained by the service provider; or
- (2) The client's own home.

[05-07-138, recodified as § 388-101-1205, filed 3/22/05, effective 3/22/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-056, filed 1/29/04, effective 2/29/04.]

**WAC 388-101-1210 Who may receive residential services?** Clients may receive residential services if they are at least eighteen years old and authorized by DDD to either:

- (1) Receive residential services outlined in this chapter; or
- (2) Have an agreement with the service provider to purchase residential services using SSP funds.

[05-05-077, recodified as § 388-101-1210, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-060, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-060, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-060, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-070, filed 8/9/91, effective 9/9/91. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-070, filed 2/9/83.]

**WAC 388-101-1220 What physical and safety requirements exist for residential services?** (1) Crisis diversion service providers who offer services in a client's

own home are exempt from the physical and safety requirements described in this section.

**For clients who receive more than forty hours of residential service per month.**

(2) When clients receive more than forty hours of residential services per month, the service provider must ensure that the following physical and safety requirements are met for the client:

- (a) A safe and healthy environment;
- (b) Accessible telephone equipment;
- (c) An evacuation plan developed and practiced with the client;
- (d) An entrance and/or exit that does not rely solely upon windows, ladders, folding stairs, or trap doors;
- (e) A safe storage area for flammable and combustible materials;
- (f) Unblocked exits;
- (g) A working smoke detector, with a light-alarm for clients with hearing impairments, located close to sleeping rooms;
- (h) A flashlight or a nonelectrical light source in working condition; and
- (i) Basic first-aid supplies.

**For clients who receive forty hours or less of residential service per month.**

(3) When clients receive forty hours or less of residential services per month, at least once every six months, the service provider must ensure the following physical safety requirements are met:

- (a) A safe and healthy environment;
- (b) An entrance and/or exit that does not rely solely upon windows, ladders, folding stairs, or trap doors;
- (c) A safe storage area for flammable and combustible materials;
- (d) Unblocked exits; and
- (e) A working smoke detector, with a light-alarm for clients with hearing impairments, located close to sleeping rooms.

(4) The following supports are also offered to clients who receive forty hours or less of residential services. These clients may choose not to participate in meeting these requirements. This choice must be documented by the service provider, as per WAC 388-101-1400. The supports offered include:

- (a) Accessible telephone equipment;
- (b) An evacuation plan developed and practiced with the client;
- (c) A flashlight or a nonelectrical light source in working condition; and
- (d) Basic first-aid supplies.

**For all clients:**

(5) The service provider must ensure that documentation is kept, showing that physical safety requirements are met. The client may independently document that these requirements are met as long as the client's IISP shows this involvement.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1220, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1220, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-070, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-070, filed 10/26/01, effective 1/1/02. 99-19-104,

recodified as § 388-820-070, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-072, filed 8/9/91, effective 9/9/91.]

**WAC 388-101-1230 How must service providers assist clients in regulating water temperature?** (1) Water temperature must be regulated by service providers for clients who receive services and supports from on-duty staff twenty-four hour a day.

(2) Service providers must assist clients so that the water temperature in their household is maintained below one hundred and twenty degrees Fahrenheit.

(3) Service providers must check the water temperature when the client first moves into the household and at least once every six months from then on. Note: The water temperature is best measured two hours after substantial hot water usage.

(4) The service provider must document compliance with this requirement.

[05-05-077, recodified as § 388-101-1230, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-076, filed 1/29/04, effective 2/29/04.]

**WAC 388-101-1240 What are supported living services?** (1) Supported living services are instruction and supports offered by service providers to clients who live in or are establishing their own homes. Homes must be owned, rented, or leased by the clients or their legal representatives.

(2) Clients who receive supported living services are responsible for paying for their daily living expenses, such as rent, utilities, and food, using their personal financial resources.

(3) The level of support is based on each client's instruction and support needs. Support may range from one hour per month to twenty-four hours per day of staff support per client.

[05-05-077, recodified as § 388-101-1240, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-080, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-080, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapters 18.88A and 71A.12 RCW. 96-10-076 (Order 3978), § 275-26-074, filed 5/1/96, effective 6/1/96.]

**WAC 388-101-1250 What are crisis diversion services?** Crisis diversion services are DDD-authorized crisis residential services and supports offered to clients on a temporary basis. DDD may offer these services to clients who show a serious decline in mental functioning that puts them at risk of psychiatric hospitalization.

[05-05-077, recodified as § 388-101-1250, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-086, filed 1/29/04, effective 2/29/04.]

**WAC 388-101-1260 What are group homes?** (1) Group homes are residences that are licensed as either a boarding home or an adult family home by RCS, under chapters 388-78A and 388-76 WAC, respectively.

(2) Group homes must have a contract with DDD.

(3) The service provider must ensure that group homes comply with all applicable licensing regulations.

(4) Group homes provide residential services to two or more clients who are unrelated to the provider.

(5) Clients who live in group homes pay costs of room and board from their own financial resources. (See WAC 388-101-1420 for additional information.)

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1260, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1260, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-090, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-090, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-090, filed 10/26/01, effective 1/1/02; 99-19-104, recodified as § 388-820-090, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapters 18.88A and 71A.12 RCW. 96-10-076 (Order 3978), § 275-26-076, filed 5/1/96, effective 6/1/96.]

**WAC 388-101-1400 When must a service provider document a client's refusal to participate in services? (1)** A service provider must document a client's refusal to participate in:

(a) Physical and safety requirements, as outlined in WAC 388-101-1220(3); and

(b) Health services under WAC 388-101-2140.

(2) Documentation must include the following:

(a) A description of events relating to the client's refusal to participate in these services;

(b) A plan to inform the client of the benefits of these services;

(c) A description of the service provider's efforts to give the services to the client; and

(d) Any health or safety concerns that the refusal may pose.

(3) The service provider must review this documentation with the client at least every six months. The client or client's guardian must sign the documentation after reviewing it.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1400, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1400, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-100, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-100, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-100, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-087, filed 8/9/91, effective 9/9/91.]

**WAC 388-101-1410 May a service provider offer services to nonclients in the same household as clients?** Service providers must notify DDD of their intent to offer services to nonclients who are in the same household with clients. DDD must approve any of these situations, considering the health, safety, and preference of the clients.

[05-05-077, recodified as § 388-101-1410, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-110, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-110, filed 9/20/99, effective 9/20/99. Statutory Authority: Chapter 72.33 RCW. 83-05-017 (Order 1945), § 275-26-097, filed 2/9/83.]

**WAC 388-101-1420 Who pays for a client's residential services?** (1) DSHS must pay for contracted residential services provided to department-funded clients. Residential services are paid at the contracted rate.

(2) DSHS must require a client to share the cost of services when mandated by federal or state statute or regulation.

(3) Clients funded through SSP may purchase services through a separate agreement with the service provider.

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(4) The service provider must inform DSHS when the client requires additional supports.

(a) The service provider must submit a written request with justification for additional service hours.

(b) DSHS may approve and provide payment for additional expenses or services.

(c) The service provider must retain a copy of department response.

(5) For a client who is receiving group home services and support:

(a) The client must pay for cost of care or services from earnings or other financial resources. Clients receiving SSI are responsible only for the cost of room and board.

(b) DSHS may pay for these services only after a client has used his or her own financial resources.

(c) When a client's guardian or legal representative controls the client's income, estate, or trust fund, he or she must reimburse the service provider as described in WAC 388-101-1420.

(6) Clients receiving supported living services must pay for their own housing, utilities, food, clothing, and other personal and incidental expenses from earnings and other financial resources.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1420, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1420, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-120, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-120, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-107, filed 8/9/91, effective 9/9/91.]

**WAC 388-101-1430 When may a service provider receive initial set-up funds from DSHS?** (1) DSHS may enter into a contractual agreement to reimburse the service provider for costs incurred to establish services. The costs must be based on a budget negotiated with DSHS.

(2) DSHS may reimburse service providers for client costs of establishing a residence.

(3) For reimbursement, the service provider must submit the billing documents required by DSHS.

[05-05-077, recodified as § 388-101-1430, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-130, filed 10/26/01, effective 1/1/02. 99-19-104, recodified as § 388-820-130, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.080. 91-17-005 (Order 3230), § 275-26-115, filed 8/9/91, effective 9/9/91.]

**WAC 388-101-1440 What are the different types of certification?** There are three different types of certification that RCS approves for residential services:

(1) Initial certification;

(2) Regular certification; and

(3) Provisional certification.

[05-05-077, recodified as § 388-101-1440, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-140, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-140, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1460 When may RCS grant initial certification to an agency?** (1) Before RCS begins the certification process, the interested agency must submit a budget

forecast, verification of financial stability, and staff coverage schedule to DDD.

(2) An interested agency must apply to RCS to be certified.

(3) RCS may grant initial certifications to agencies that meet the requirements outlined in this chapter.

[05-05-077, recodified as § 388-101-1460, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-150, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-150, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1470 How does an agency apply for initial certification?** To apply for initial certification, an agency must go through the following application procedures.

(1) DDD will review:

- (a) Verification of financial stability;
- (b) A budget forecast; and
- (c) A staff-coverage schedule.

(2) After reviewing, DDD will send a letter of suggestion to RCS.

(3) The interested agency will submit to RCS:

- (a) A letter of intent;
- (b) Relevant experience and qualifications of the agency;
- (c) A minimum of two professional references;
- (d) The administrator's resume;
- (e) A list of the agency board of directors and affiliations, if applicable;
- (f) Policies, principles and procedures regarding health and safety and;
- (g) Methods on the prevention and reporting of abuse, neglect, exploitation and mistreatment to clients according to state law.

RCS may request additional information as needed to complete the application process.

(4) Before applying to RCS, the interested agency will keep in their records the following:

- (a) A letter of intent;
- (b) A mission statement;
- (c) A statement of assurance stating that the service provider will not discriminate against a client or employee (see WAC 388-101-1630);
- (d) Verification of financial stability;
- (e) A budget forecast;
- (f) A staff coverage;
- (g) A staff in-service training plan;
- (h) The agency's policies and procedures;
- (i) Relevant experience and qualifications of the agency;
- (j) A minimum of two professional references;
- (k) A copy of the license if applying for a group home;
- (l) The administrator's resume; and
- (m) A list of the agency board of directors and affiliations, if applicable.

(5) RCS must provide the county with a copy of the agency's letter of intent.

(6) The county may submit written recommendations about the application to RCS within thirty calendar days after receiving the letter of intent. RCS reviews the county's recommendations.

(7) An agency must comply within one hundred and eighty days of the certification's effective date with:

- (a) Relevant federal, state, and local laws and ordinances; and
- (b) RCS/DDD established requirements.

(8) After receiving all materials requested, a determination will be made on initial certification based on the information received. RCS notifies the agency in writing that all documentation has been received and determines if the agency meets the minimal requirements for initial certification.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1470, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1470, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-160, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-160, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1480 What happens after an agency receives initial certification?** After an agency receives initial certification, DDD decides whether to grant a residential services contract with that agency.

(1) Under initial certification, agencies that receive a contract with DDD become service providers. Once a contract is in place, a service provider is approved for receiving client referrals and serving clients in a particular region for up to one hundred and eighty days. Service providers must have a separate contract for each region where they receive referrals and serve clients.

(2) If DDD does not contract with an agency, initial certification will be valid for up to a year for that agency.

[05-05-077, recodified as § 388-101-1480, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-170, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1490 May initial certification be extended for a service provider?** If the initial certification expires before RCS conducts a formal review and evaluation of a service provider, RCS may extend the initial certification up to one hundred and eighty days.

[05-05-077, recodified as § 388-101-1490, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-180, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-180, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1500 How does a service provider receive regular certification?** (1) RCS uses a formal review and evaluation process to determine whether a service provider has complied with certification requirements outlined in this chapter and the DSHS/DDD contract.

(2) The county may submit recommendations about a service provider to RCS.

(3) After determining that a service provider has complied with requirements, RCS may approve a service provider for regular certification.

(a) This certification allows a service provider to continue to receive referrals and provide instruction and support to clients.

(b) Regular certification may be granted to service providers for up to two years.

(4) Regular certification may be extended for a period up to one hundred and eighty days.

[05-05-077, recodified as § 388-101-1500, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-190, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-190, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1510 How often are reviews and evaluations done for service providers?** (1) RCS must review and/or evaluate each service provider's services at least every two years.

(2) RCS may review a client's records and activities at any time to see if the service provider continues to address the clients' needs for instruction and support activities.

(3) DSHS may conduct additional evaluations or audits of any service provider at its discretion.

[05-05-077, recodified as § 388-101-1510, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-200, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-200, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1520 What occurs during review and evaluation?** (1) Service providers are evaluated, using this chapter and the DSHS/DDD contract requirements.

(2) To gather information, evaluators use a sample of clients that the service provider supports. Ways to gather information for evaluation must include:

- (a) Observation of staff and client interactions;
  - (b) Interview of clients, legal representatives, and others with the client's consent; and
  - (c) Review of records.
- (3) Information may also be gathered by conducting:
- (a) Interviews with other entities contracted with DSHS; and

(b) Interviews with DSHS staff.

(4) The state-contracted evaluators discuss with the service provider their preliminary findings and request additional information and clarification.

(5) Evaluators conduct an exit conference to present the draft report to the service providers and DDD. The service provider's administrator or designee must be present at this exit conference. A copy of the draft report with preliminary findings are sent to RCS.

(a) The evaluation report will include the service provider's operation history.

(b) If the service provider has not complied with certification requirements or with its contract with DSHS/DDD, the evaluator will note the findings in the draft report.

(c) The service provider must draft a corrective action plan(s) with specific time frames and submit it to RCS for approval.

(d) At the conclusion of the exit conference, the service provider will receive a draft copy of the report including the corrective action plan(s) and the evaluator(s) will submit the draft copy to RCS.

(e) The final report, including corrective action plan(s), will be finalized by RCS and sent to the service provider.

[05-05-077, recodified as § 388-101-1520, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-210, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-210, filed 10/26/01, effective 1/1/02.]

tory Authority: Title 71A RCW. 01-22-020, § 388-820-210, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1530 May service providers disagree with evaluation findings?** (1) If service providers disagree with evaluation findings, they must submit in writing documentation supporting their position within ten working days after the exit conference.

(2) After receiving the service provider's documentation, RCS must send written notification of its decision to the service provider within ten working days.

(3) The service provider's documentation and RCS' decision must become part of the final evaluation report.

(4) RCS must file a final report of the evaluation results and send a copy to the service provider. At this time, the evaluation report is considered to be a public document.

[05-05-077, recodified as § 388-101-1530, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-220, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-220, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1540 May a service provider receive provisional certification?** (1) A service provider that does not comply with requirements of this chapter may receive provisional certification by RCS.

(2) Provisional certification may not exceed one hundred eighty days.

(3) At the end of provisional certification:

(a) If the service provider has complied with certification requirements, RCS may approve the service provider for regular certification.

(b) If the service provider has not complied with all certification requirements, RCS must revoke the service provider's certification and DSHS/DDD must terminate the contract.

[05-05-077, recodified as § 388-101-1540, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-230, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-230, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-230, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1550 When may RCS decertify a service provider?** If a service provider does not comply with certification requirements, RCS may decertify a service provider under chapter 43.20A RCW. Upon decertification, DSHS/DDD must terminate the contract.

[05-05-077, recodified as § 388-101-1550, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-240, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-240, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1600 What are administrators of service providers required to do?** RCS requires administrators of service providers to oversee all aspects of services delivered to clients, consistent with the DSHS/DDD contract. This includes:

(1) Overseeing all aspects of staff development, such as recruitment and staff training;



(2) Preparing and maintaining policies and procedures related to client services, personnel, and financial records; and

(3) Securely storing client, personnel, and financial records.

[05-05-077, recodified as § 388-101-1600, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-250, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-250, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1610 What type of administrative documents are service providers required to have?** (1) Service providers must have these written statements:

- (a) A mission statement;
- (b) Program description;
- (c) An organizational chart and description showing all supervisory relationships; and
- (d) Definition of staff roles and responsibilities, including the person designated to act in the absence of the administrator.

(2) Service providers must also have these policies and procedures:

- (a) Admission criteria;
- (b) Client rights, including a client's right to file a complaint or suggestion without interference;
- (c) Client grievance procedures; and
- (d) Methods used for soliciting client input and feedback on services and support received.

(3) Service providers must have health and safety policies and procedures including:

- (a) Information on how to report suspected abuse, neglect, exploitation, and mistreatment;
- (b) Plans for responding to missing persons; client emergencies, including access to medical, mental health, and law enforcement resources; and natural or other disasters; and
- (c) Notification of client's guardian and/or relatives in case of emergency.

(4) In addition to other required documents, service providers must keep all documents, policies and procedures as required by the Centers for Medicare and Medicaid Services and any other applicable state or federal laws and have them readily available to DSHS.

[05-05-077, recodified as § 388-101-1610, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-260, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-260, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-260, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1620 What are the requirements for personnel policies?** (1) Service providers must maintain current written personnel policies and procedures.

(2) Personnel policies and procedures must be available to all employees.

[05-05-077, recodified as § 388-101-1620, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-270, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1630 What nondiscrimination requirements must agencies and service providers meet?**

(1) When employing staff or supporting clients, agencies and

service providers must not discriminate against any person on the basis of:

- (a) Race;
- (b) Color;
- (c) Creed;
- (d) Religion;
- (e) National origin;
- (f) Age;
- (g) Gender;
- (h) Presence of any sensory, mental, or physical disability, including HIV/AIDS conditions;
- (i) Use of a trained dog guide or service animal by a person with a disability;
- (j) Marital status;
- (k) Disabled status or Vietnam Era veteran status;
- (l) Sexual orientation; and
- (m) Any other reasons prohibited by law.

(2) **Exception:** An employer may deny employment to a person if the decision is based upon a bona fide occupational qualification. (See chapter 49.60 RCW.)

[05-05-077, recodified as § 388-101-1630, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-280, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1640 What staffing requirements must service providers meet?** (1) A service provider must have a designated administrator.

(2) Clients must have immediate access to staff, or the means to contact staff, at all times: Twenty-four hours a day, seven days a week.

(3) A service provider must provide adequate staff within contracted hours to administer the program and meet the needs of the clients.

(4) Each group home must maintain staffing that complies with:

(a) Boarding home or adult family home licensing requirements under chapter 388-78A or 388-76 WAC, respectively; and

(b) Contract requirements with the division of developmental disabilities.

[05-05-077, recodified as § 388-101-1640, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-290, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-290, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-290, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1650 May clients instruct and support other clients?** (1) Clients must not be routinely involved in the unpaid instruction and support of other clients.

(2) Clients placed in crisis diversion services must not be involved in the instruction and support of other clients.

[05-05-077, recodified as § 388-101-1650, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-300, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-300, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1660 Who needs background checks?**

(1) Service providers must obtain background checks from DSHS for all administrators, employees, volunteers and sub-

contractors showing that there are no disqualifying records to prevent individuals from working with clients.

(2) Before administrators, employees, volunteers or subcontractors may have unsupervised access to clients, the service provider must have a background check report from DSHS. This report must indicate that the individual has no disqualifying records that prevent him or her from working with clients.

(3) In certain situations, administrators, employees, volunteers, or subcontractors can only work with clients when they are directly observed by staff authorized to have unsupervised access to clients. These situations are:

(a) The service provider has not yet received a DSHS response for a background check request;

(b) DSHS has disqualified the individual based on background check information; or

(c) The individual is awaiting FBI clearance and does not have provisional clearance from their employer under WAC 388-06-0500 through 388-06-0540.

(4) Background checks must be renewed at least every thirty-six months for each administrator, employee, volunteer or subcontractor of a contracted service provider.

(5) Licensed boarding homes or licensed adult family homes must adhere to the current regulations set forth in this chapter and in the applicable licensing laws.

(6) Service providers must follow the requirements of RCW 43.43.830 and 74.15.030.

[05-05-077, recodified as § 388-101-1660, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-310, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-310, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-310, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1670 What are the minimum requirements for staff employed by service providers?** Service provider staff must meet the following minimum requirements:

(1) Pass background check as per WAC 388-101-1660;

(2) Exhibit job-related competency and the ability to make independent judgments;

(3) Have a high school diploma or GED equivalent, unless the employees were hired before September 1, 1991;

(4) Be at least eighteen years of age when employed as a direct care staff, or at least twenty-one years of age when employed as an administrator; and

(5) Treat clients with dignity and consideration, respecting the clients' civil and human rights at all times.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1670, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1670, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-320, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-320, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1680 What staff training is required?** The service provider must give specific training to staff. Within the first six months, staff must receive a minimum of thirty-two total hours of training that meet the following requirements.

(1) Before the employee works alone with clients, the service provider must explain the following to the employee:

(a) The current instruction and support plans of the clients with whom the employee works;

(b) Emergency procedures for clients;

(c) The state law on abuse and neglect; and

(d) Client confidentiality.

(2) Within the first four weeks of employing a staff person, the service provider must provide training that includes:

(a) The service provider's mission statement;

(b) Policies and procedures; and

(c) On-the-job training.

(3) Additional training within the first six months must include:

(a) First aid/CPR;

(b) Bloodborne pathogens with HIV/AIDS information; and

(c) Client services.

(4) Each employee must keep first aid/CPR certification and bloodborne pathogens training current.

(5) The service provider must document orientation and training activities.

(6) Group homes must also meet the training requirements mandated by the licensing requirements specified in chapter 388-78A WAC.

[05-05-077, recodified as § 388-101-16800, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-330, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-330, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-330, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1690 How often must performance reviews be conducted for staff of service providers?** (1) Written performance reviews for staff of residential service providers must be conducted at least every twenty-four months and kept on file.

(2) If the service provider is a nonprofit organization, the organization's governing board, must give written performance reviews for administrators every twenty-four months.

(3) If the service provider is a for-profit organization, owners are not required to have performance reviews.

(4) If the service provider is a governmental agency, administrators are evaluated by their supervisor.

[05-05-077, recodified as § 388-101-1690, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-340, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-340, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1700 When must service providers have staff-coverage schedules approved by DDD?** (1) DDD must approve staff-coverage schedules for those service providers who have on-duty staff twenty-four hours a day.

(2) The staff-coverage schedules must be approved at the following times:

(a) Before certification review takes place;

(b) When household configuration changes affect staff coverage; or

(c) When additional staffing is requested.

(3) Staff-coverage schedules may be requested by DDD at any time.

(4) Each service provider must retain copies of the approved staff-coverage schedules.

[05-05-077, recodified as § 388-101-1700, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-350, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-350, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1710 What happens when a service provider's ownership changes?** (1) A service provider must inform RCS and DDD in writing sixty days before a change of ownership occurs.

(2) On the effective date of a change of ownership, RCS must terminate the department's certification and DSHS/DDD must terminate the contract with the previous service provider.

(3) DDD must withhold final payment to the previous service provider until that service provider submits and DSHS accepts all reports and required documents.

(4) DDD is under no obligation to contract with the new owner entity.

[05-05-077, recodified as § 388-101-1710, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-360, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-360, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1720 When may a client's service provider change?** A client's service provider may change when:

(1) A client stops receiving residential services and supports from a service provider;

(2) A service provider transfers ownership; or

(3) The client chooses a different service provider.

[05-05-077, recodified as § 388-101-1720, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-370, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1730 Are clients' records considered confidential?** (1) The service provider and staff must consider all client record information privileged and confidential. Copies of client record information are available to:

(a) DSHS, the client, and/or legal representative upon their request to the service provider; and

(b) The county developmental disabilities board with DDD approval, as allowed under RCW 71A.14.070.

(2) Any other transfer or inspection of records must be authorized by a release of information form that:

(a) Specifically gives information about the transfer or inspection; and

(b) Is signed by the client or guardian.

(3) A signed release of information is valid for up to one year.

[05-05-077, recodified as § 388-101-1730, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-380, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1740 How long does a service provider need to keep client records?** (1) While supporting a client, a service provider must keep a client's records from at least the past four years.

(2) After a client's participation with a service provider ends, the client's records must be kept by the service provider for at least six years.

[05-05-077, recodified as § 388-101-1740, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-390, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1750 What information do service providers need to keep in client records?** (1) Crisis diversion service providers are exempt from the client record requirements specified in this section. Instead, they must follow requirements outlined in WAC 388-101-1760.

(2) Service providers must keep certain information in client records to fulfill DSHS requirements. The client's records must include, but not be limited to, the following:

(a) The client's name, address, and Social Security number.

(b) The name, address, and telephone number of the client's relative, guardian or legal representative.

(c) Copies of legal guardianship papers, if any.

(d) Client health records, including:

(i) The name, address, and telephone number of the client's physician, dentist, mental health service provider, and any other health care service provider;

(ii) Health care service providers' instructions about health care needed, including appointment dates and date of next appointment if appropriate;

(iii) Written documentation that the health care service providers' instructions have been followed; and

(iv) A record of major health events and surgeries when known.

(e) A copy of the client's most recent individual service plan or plan of care (ISP/POC).

(f) The client's individual instruction and support plan (IISP), including:

(i) Instruction and support activities for each client as a basis for review and evaluation of client's progress;

(ii) Semiannual review of the IISP;

(iii) Consultation with other service providers and other interested persons;

(iv) IISP revisions and changes; and

(v) Other activities relevant to the client that the client wants included.

(g) Progress notes and incident reports on clients.

(h) The client's financial records for funds managed by the service provider, including:

(i) Receipts, ledgers and records of the client's financial transactions; and

(ii) Client's related bankbooks, checkbooks, bank registers, tax records and bank statements.

(i) Burial plans and wills.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-1750, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-1750, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-400, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-400, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-400, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1760 What information do crisis diversion service providers need to keep in client records?**

(1) All crisis diversion service providers must keep the following information in client records:

(a) The client's name, address, and Social Security number.

(b) The name, address, and telephone number of the client's relative, guardian or legal representative.

(c) Progress notes and incident reports on clients.

(2) Crisis diversion service providers other than those offering services in a client's own home have additional requirements. These service providers also must keep the following information in client records:

(a) An initial assessment;

(b) A crisis service plan;

(c) Copies of legal guardianship papers, if any;

(d) Client health records, including:

(i) The name, address, and telephone number of the client's physician, dentist, mental health service provider, and any other health care service provider;

(ii) Health care service providers' instructions about health care needed, including appointment dates and date of next appointment if appropriate;

(iii) Written documentation that the health care service providers' instructions have been followed; and

(iv) A record of major health events and surgeries when known.

[05-05-077, recodified as § 388-101-1760, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-405, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-405, filed 1/29/04, effective 2/29/04.]

**WAC 388-101-1770 Do service providers need to keep client's property records?** (1) Crisis diversion service providers who offer services in a client's own home are exempt from requirements in this section.

(2) The service provider must assist clients in maintaining current, written property records when the clients receive forty hours or more a month of services. The record consists of:

(a) A list of items with a value of at least twenty-five dollars that the client owns when moving into the program;

(b) A list of personal possessions with a value of seventy-five dollars or more per item once the client is receiving services;

(c) Description and identifying numbers, if any, of the property;

(d) The date the client purchased the items after moving into the program;

(e) The date and reason for addition or removal from the record; and

(f) The signature of the staff or client making the entry.

[05-05-077, recodified as § 388-101-1770, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-410, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-410, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1780 Are there requirements for record entries?** (1) The service provider must note all record entries in ink.

(2) Entries must be made at the time of or immediately following the occurrence of the event recorded, in legible writing, and dated and signed by the person making the entry.

[05-05-077, recodified as § 388-101-1780, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-420, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1790 Who must service providers notify in emergencies?** In emergencies, a service provider must:

(1) Notify the client's guardian or legal representative as soon as possible;

(2) Immediately report to DSHS about a serious incident or emergency; and

(3) Submit a written incident report to DSHS, as required by law or policy.

[05-05-077, recodified as § 388-101-1790, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-430, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-430, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1800 What are client services?** Clients must receive instruction and support activities in one or more of these client services:

(1) Health and safety;

(2) Personal power and choice;

(3) Competence and self-reliance;

(4) Positive recognition by self and others;

(5) Positive relationships; and

(6) Integration in the physical and social life of the community.

[05-05-077, recodified as § 388-101-1800, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-450, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1810 What health and safety support may a service provider offer to a client?** Service providers offer health and safety support to assist clients. This may include assisting clients to:

(1) Know when they need health services;

(2) Maintain good health;

(3) Learn about basic nutrition;

(4) Learn about human sexuality;

(5) Use health services, including mental health services;

(6) Manage and/or self-administer their medications;

(7) Deal with illness and injury;

(8) Apply first-aid procedures;

(9) Learn self-protection;

(10) Become aware of fire evacuation plans and burglary protection strategies; and

(11) Know emergency procedures, such as using 911 or a local emergency number.

[05-05-077, recodified as § 388-101-1810, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-460, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1820 What support may a service provider offer to a client to increase personal power and choices?** Service providers support a client's personal power and choices. This may include assisting clients to:

- (1) Secure housing and furnishings that reflect personal preferences, life style, and financial means;
- (2) Express personal opinions and make decisions;
- (3) Learn and exercise rights and responsibilities;
- (4) Improve communication skills;
- (5) Participate in a variety of activities of their choice, including new experiences;
- (6) Exercise voter rights;
- (7) Learn about and participate in self-advocacy and protection services; and
- (8) Make career choices.

[05-05-077, recodified as § 388-101-1820, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-470, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1830 What support may a service provider offer to increase a client's competence and self-reliance?** Service providers increase a client's competence and self-reliance. This may include assisting clients to:

- (1) Develop and achieve their goals;
- (2) Learn and use daily living skills, such as meal planning and preparation, grocery shopping, doing laundry, using household appliances, managing money, and using leisure time;
- (3) Identify situations where the client needs or desires assistance from others;
- (4) Complete or participate in all tasks within their abilities; and
- (5) Acquire and use adaptive devices and equipment, as needed.

[05-05-077, recodified as § 388-101-1830, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-480, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1840 How may service providers assist clients in gaining positive recognition?** Service providers encourage a client's positive recognition. This may include assisting clients to:

- (1) Create positive self-esteem and feelings of self-worth;
- (2) Choose valued social roles;
- (3) Make choices that enhance their positive recognition by community members; and
- (4) Present themselves in ways that are typical of other people in their community.

[05-05-077, recodified as § 388-101-1840, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-490, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1850 What support may a service provider offer to increase the positive relationships in the client's life?** Service providers encourage clients in developing, maintaining, and expanding positive relationships. This may include assisting clients to:

- (1) Improve their communication skills;
- (2) Experience opportunities to meet and interact with other people;
- (3) Initiate, build and sustain relationships;
- (4) Involve the client's guardian, chosen family members or representative in planning and making decisions that affect the client;

(5) Resolve disagreements with peers, family, friends, staff, neighbors, and coworkers; and

(6) Cope with the loss of a significant relationship, such as the death of a friend or family member, the end of a relationship, the loss of a job, or a change of staff.

[05-05-077, recodified as § 388-101-1850, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-500, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1860 How may a service provider assist clients with becoming integrated into their community?** Service providers encourage clients to become integrated into the physical and social life of the community. Service providers may assist clients to:

- (1) Use community resources such as grocery store, bank, and social organizations;
- (2) Use available transportation;
- (3) Access educational and vocational opportunities; and
- (4) Participate on boards, committees, or other positions of influence or status.

[05-05-077, recodified as § 388-101-1860, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-510, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1870 What is an individual service plan/plan of care (ISP/POC) for clients?** An individual service plan or plan of care (ISP/POC) is required for each client. The ISP/POC outlines the support needs and interests of the client. The plan identifies the responsibilities of the service provider and other entities in supporting the client. Examples of other entities are: Vocational provider, therapists, nurses, and advocates. (See RCW 71A.18.010.)

[05-05-077, recodified as § 388-101-1870, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-520, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-520, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1880 Who is responsible for completing and overseeing a client's ISP/POC?** The client's DDD case resource manager is responsible for completing and overseeing a client's individual service plan or plan of care (ISP/POC).

[05-05-077, recodified as § 388-101-1880, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-530, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-530, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1890 Who may participate in creating a client's ISP/POC?** (1) The case resource manager must have face-to-face contact with the client in developing the individual service plan or plan of care (ISP/POC).

(2) The case resource manager must also involve the client's guardian or legal representative and the service provider.

(3) In creating a client's individual service plan or plan of care (ISP/POC), under RCW 71A.18.010, the client and DDD case resource manager may involve:

- (a) Department staff; and
- (b) Other interested persons invited by the client.

[05-05-077, recodified as § 388-101-1890, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-540, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-540, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-1900 How often must the ISP/POC be reviewed?** (1) An ISP/POC meeting must be held and a new ISP/POC developed with the client at least every twelve months, under RCW 71A.18.010. The meeting must be held in the client's home unless requested otherwise by the client.

(2) A client may request a review of the ISP/POC at any time.

[05-05-077, recodified as § 388-101-1900, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-550, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-550, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-550, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2000 What plans must crisis diversion service providers develop?** Crisis diversion service providers must develop the following plans for each client they support:

(1) An initial assessment plan within forty-eight hours of placement; and

(2) A crisis service plan within seven days of placement.

[05-05-077, recodified as § 388-101-2000, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-555, filed 1/29/04, effective 2/29/04.]

**WAC 388-101-2010 What is an individual instruction and support plan (IISP) for clients?** (1) An individual instruction and support plan (IISP) outlines the specific goals for carrying out the residential services portion outlined in the individual service plan or plan of care (ISP/POC). The IISP also must describe the methods of instruction and/or support needed to reach the client's goal.

(2) The IISP must be based on the goals of the individual service plan or plan of care (ISP/POC), reflect the client's preferences, and have the client's agreement.

(3) The IISP identifies activities and opportunities that promote one or more of the following client services:

(a) Health and safety;

(b) Personal power and choice;

(c) Positive recognition by self and others;

(d) Integration in the physical and social life of the community;

(e) Positive relationships; and

(f) Competence and self-reliance.

[05-05-077, recodified as § 388-101-2010, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-560, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-560, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-560, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2020 Who may participate in developing the IISP for each client?** (1) The service provider must develop with each client a written individual instruction and support plan (IISP).

(2) The client may involve other interested individuals in developing the IISP.

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(3) The service provider must facilitate the individual instruction and support plan (IISP) in a manner that:

(a) Is respectful and inclusive of the client;

(b) Is appropriate to the age of the client or is preferred by the client;

(c) Takes place or occurs in community settings; and

(d) Results in opportunities for clients to experience positive change and personal growth.

[05-05-077, recodified as § 388-101-2020, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-570, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2030 Who oversees the IISP for each client?** (1) The service provider must oversee the progress made on each client's individual instruction and support plan (IISP).

(2) In overseeing each client's IISP, the service provider must:

(a) Consult with other service providers serving the client and other interested persons, as needed, to coordinate the IISP;

(b) Revise the IISP as goals are achieved, or as requested by the client and/or guardian; and

(c) Review and update the plan at least every six months.

[05-05-077, recodified as § 388-101-2030, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-580, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2040 May a service provider manage a client's funds?** (1) A service provider may manage a client's funds after either:

(a) Obtaining written consent from the client, the client's guardian or legal representative; or

(b) Becoming the designated payee by the source of the client's unearned income.

Note: An example is a client receiving unearned income from the Social Security Administration.

(2) A client's funds are considered to be managed by a service provider when the service provider:

(a) Has signing authority and may disperse a client's funds; and/or

(b) May limit access to client funds by not allowing funds to be expended.

[05-05-077, recodified as § 388-101-2040, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-590, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2050 May a service provider hold bankbooks and bankcards for a client?** Clients may ask a service provider to hold their bankbooks and bankcards while still having access to their own funds. This must be documented in the client's record and updated annually.

Note: In this situation, service providers are not necessarily considered managers of the client's funds.

[05-05-077, recodified as § 388-101-2050, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-600, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-600, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2060 May a service provider combine agency and client funds?** A service provider may not com-

bine client funds with any agency funds, such as agency operating funds.

[05-05-077, recodified as § 388-101-2060, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-610, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2070 Does the service provider need to develop an individual financial plan (IFP) for clients?**

(1) A financial management plan is required only for those clients whose funds are managed by the service provider. The client and service provider must develop this individual financial plan (IFP) together.

(2) The IFP must be reviewed at least every twelve months by the service provider and client.

(3) A copy of the IFP must be sent to:

(a) The guardian and/or legal representative; and

(b) The client's DDD case resource manager upon request.

[05-05-077, recodified as § 388-101-2070, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-620, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2080 What information must the IFP include?** This plan must include all of the following items:

(1) The part of the client's funds and income that will be managed by the service provider;

(2) The part of client funds and income that will be managed by the client or legal representative;

(3) The type of accounts used;

(4) A budget process;

(5) Asset management, such as personal property, burial plan, retirement funds, stock, and vehicles;

(6) Cash management;

(7) Money management instruction and/or support;

(8) An explanation of which purchases require receipts;

(9) Contingency plan for expenditures if a client's resources exceed the home and community based services (HCBS) waiver limit; and

(10) A signature of the client and the client's guardian, if any.

[05-05-077, recodified as § 388-101-2080, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-630, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-630, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2090 How does a service provider manage client funds?** (1) For client's funds that the service provider manages, the service provider must:

(a) Separately track each client's money even when several clients reside together;

(b) Keep the client's account current by maintaining a running balance;

(c) Reconcile the client's account to the bank statement on a monthly basis;

(d) Make deposits to the client's account within one week of receiving the client's money;

(e) Prevent the client's account from being overdrawn;

(f) Ensure that individual cash funds do not exceed seventy-five dollars per person unless specified differently in the individual's financial plan; and

(g) Retain receipts for purchases of over twenty-five dollars.

(2) When a client's service provider receives a check made out to the client, the service provider assisting the client must either:

(a) Get the client's signature and designation "for deposit only," and deposit the check in the client's account; or

(b) Get the client's "x" mark in the presence of another witness, cosign the check with the designation "for deposit only," and deposit the check in the client's account.

(3) If the check for a client is made out to a payee other than the client, the payee signs the check.

(4) Clients must never sign a blank check.

(5) When clients use checks for purchases, they must sign checks at the time of purchase unless specified differently in their individual financial plan.

(6) The service provider must document the names of any staff who assist a client with financial transactions.

[05-05-077, recodified as § 388-101-2090, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-640, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2100 What documentation must service providers keep to protect a client's financial interests?** Service providers must keep certain documentation for the part of funds they manage for clients. This protects clients' financial interests.

(1) Documentation for bank and cash accounts must include a monthly reconciliation and verification of the reconciliation. The reconciliation and/or verification must be completed by a person who did not make or assist in any financial transaction.

(2) Other documentation that a service provider must keep for client financial transactions include:

(a) Monthly bank statements and reconciliation;

(b) Checkbook registers and bankbooks;

(c) Deposit receipts;

(d) Receipts for purchases over twenty-five dollars;

(e) Any itemized subsidiary ledgers showing deposits, withdrawals, and interest payments to individual clients; and

(f) A control journal for trust accounts.

(3) Other documentation that a service provider must keep for client cash transactions include:

(a) A detailed ledger signed by the person who withdrew any of the client's money;

(b) Monthly reconciliation to the cash amount;

(c) Detailed accounting of the money received on behalf of the client, such as cash received from writing checks over the purchase amount, and a list of where the money was spent; and

(d) Receipts for purchases over twenty-five dollars where service provider staff withdrew the money.

(4) Service providers must notify DSHS when the client:

(a) Receives services under a home and community based services (HCBS) waiver; and

(b) Has an account that reaches three hundred dollars less than the maximum amount allowed by federal or state law.

Note: CAP-waiver is defined under WAC 388-825-170.

[05-05-077, recodified as § 388-101-2100, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12

RCW. 04-23-070, § 388-820-650, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-650, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-650, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2110 How are a client's funds transferred when they are managed by a service provider?**

When a service provider manages a client's funds, transferring those funds must follow specific procedures.

(1) When a client transfers from one service provider to another, the previous service provider must transfer client funds within thirty days. To transfer funds, the previous service provider must:

(a) Give the client, the client's guardian, and/or the legal representative a written accounting of all known client funds;

(b) When applicable, give the new service provider a written accounting of all transferred client funds;

(c) Obtain a written receipt from the client, client's guardian and/or legal representative for all transferred funds; and

(d) When applicable, obtain the new service provider's written receipt for the transferred funds.

(2) When a client becomes incapacitated or a client's whereabouts are unknown, the client's service provider must transfer the client's funds within one hundred and eighty days to the client's legal guardian, to DSHS, or to the requesting governmental entity.

(3) When a client dies, the service provider must transfer the client's funds within ninety days to:

(a) The client's guardian;

(b) The legal representative;

(c) The requesting governmental entity; or

(d) DSHS if the client does not have a legal heir.

[05-05-077, recodified as § 388-101-2110, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-660, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2120 How does a service provider handle loans to a client?** (1) A service provider may loan money to a client from the service provider's funds and collect the debt from the client by installments.

(2) The client's service provider must **not**:

(a) Charge a client interest for money loaned; or

(b) Borrow funds from the client.

(3) A service provider must retain a signed agreement with the client.

(4) Documentation must be kept for:

(a) The amount loaned;

(b) Payments; and

(c) The balance owed.

[05-05-077, recodified as § 388-101-2120, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-670, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2130 When must a service provider pay a client?** A service provider must pay a client when:

(1) A service provider or staff has stolen, misplaced, or mismanaged client funds.

(2) There are service charges incurred on a trust account that the service provider operates for a client.

(3) A client performs work for the service provider.

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(a) The service provider must pay the client at least the current minimum wage.

(b) Clients who work for a service provider must be paid according to federal and state law requirements.

[05-05-077, recodified as § 388-101-2130, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-680, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2140 What must service providers do to support a client's health?** (1) The service provider must give necessary assistance to the client in:

(a) Accessing health, mental health, and dental services; and

(b) Medication management, administration and assistance.

(2) For clients who receive an average of thirty hours or more of service per month or are placed in the diversion services, the service provider must:

(a) Maintain health records;

(b) Assist the client in arranging appointments with health professionals;

(c) Monitor medical treatment prescribed by health professionals;

(d) Communicate directly with health professionals when needed; and

(e) Ensure that the client receives an annual physical and dental examination unless the appropriate medical professional gives a written exception. Crisis diversion service providers are exempt from this requirement.

[05-05-077, recodified as § 388-101-2140, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030 and chapter 71A.12 RCW. 04-04-043, § 388-820-690, filed 1/29/04, effective 2/29/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-690, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2150 May a client refuse health care services?** A client may refuse to participate in health care services. Service providers must document these situations, according to WAC 388-101-1400.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-2150, filed 5/3/05, effective 6/3/05. 05-05-077, recodified as § 388-101-2150, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-700, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2160 When may client funds be used for health services?** (1) Client funds for health services may be used when no other funding is available.

(2) A service provider must document all denials from:

(a) DSHS' medical assistance administration; and/or

(b) Private insurance companies or other carriers of primary medical insurance.

(3) The written documentation must be given to the client's DDD case resource manager and kept in the client's files.

[05-05-077, recodified as § 388-101-2160, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-710, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2300 How must the service provider be involved with a client's transportation needs?** (1) The



service provider must provide transportation or ensure that clients have a way to get to:

- (a) Emergency medical care;
- (b) Medical appointments; and
- (c) Therapies.

(2) Within available resources, the service provider must provide necessary assistance with transportation to and from:

- (a) Work, school or other publicly funded services;
- (b) Leisure or recreation activities;
- (c) Client-requested activities; and
- (d) ISP/POC- or IISP-related activities.

(3) A vehicle that the service provider uses to transport clients must be:

- (a) In safe operating condition; and
- (b) Properly insured for its usage.

[05-05-077, recodified as § 388-101-2300, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-720, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-720, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2330 May an agency or service provider contest a RCS decision?** (1) An agency or service provider may contest a RCS decision about certification within twenty-eight days of being notified of the decision.

(2) Within this twenty-eight day period, the agency or service provider must request in writing that the RCS director or designee review the decision. The agency or service provider must:

- (a) Sign the request;
- (b) Identify the challenged decision and the date it was made;
- (c) State specifically the issues and regulations involved and the grounds for the service provider's disagreement; and
- (d) Include with the request copies of any supporting documentation for the service provider's position.

[05-05-077, recodified as § 388-101-2330, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-880, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-880, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2340 When does an administrative review conference occur?** (1) After receiving the agency or service provider's timely written request to review a decision, RCS has twenty-eight days to contact the service provider to schedule an administrative review conference at a mutually convenient time.

(2) **Exception:** The agency or service provider and RCS may agree in writing to a specific later date for the conference.

[05-05-077, recodified as § 388-101-2340, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-890, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-890, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2350 May an administrative review conference be conducted by telephone?** (1) The administrative review conference between RCS and an agency or service provider may be conducted by telephone.

(2) **Exception:** If either RCS, or the agency or service provider requests in writing that the conference be held in person, the conference may not be conducted by telephone.

[05-05-077, recodified as § 388-101-2350, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-900, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-900, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2360 What happens during the administrative review conference?** (1) The agency or service provider requesting an administrative review conference and appropriate RCS representatives must attend the conference.

(2) The agency or service provider must bring to the conference, or give to RCS before the conference, any supporting documentation for the service provider's position.

(3) The parties must clarify and attempt to resolve the issues at the conference.

(4) If additional documentation is needed to resolve issues, a second session of the conference must be scheduled. The second conference must be scheduled no later than twenty-eight days after the initial session unless both parties agree in writing to a specific later date.

(5) The director or designee of RCS must give a written decision to the service provider after the end of the conference.

[05-05-077, recodified as § 388-101-2360, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-910, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-910, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2370 May an agency or service provider contest the decision from the administrative review conference?** At the administrative review conference, an agency or service provider may contest a decision made by the director or designee of RCS. To contest a decision, the agency or service provider may request a hearing. The hearing procedure follows the requirements under chapter 388-02 WAC.

[05-05-077, recodified as § 388-101-2370, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-920, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-920, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2380 Does RCS make exceptions to the requirements in this chapter?** RCS may grant service providers exceptions to the requirements specified in this chapter as long as the following conditions are met:

(1) The service provider must submit a written request for an exception to the DDD regional administrator of the region where the contract is held.

(2) DDD must evaluate requests for exceptions, considering:

- (a) The health and safety of the clients;
- (b) The quality of the services;
- (c) Supervision; and
- (d) The impact on client services.

(3) DDD must send a copy of the requests that have significant impacts on client services to the client(s) involved.

DDD must then give the client an opportunity to comment before an exception is granted.

(4) DDD will send their recommendations of the exceptions of the requirements to RCS within twenty working days.

(5) The RCS director or designee will approve or deny the request in writing within ten working days after receiving the recommendation from DDD.

(6) Any exception granted must be in line with the legislative intent of Title 71A RCW.

(7) Service providers must retain a copy of each RCS-approved exception.

(8) Service providers do not have hearing rights when they receive a denial from RCS for an exception to the rules in this chapter.

[05-05-077, recodified as § 388-101-2380, filed 2/15/05, effective 2/15/05. Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, § 388-820-930, filed 11/15/04, effective 12/16/04. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-930, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2400 Who may delegate nursing care tasks?** (1) Any registered nurse (RN) may delegate specified nursing care tasks to staff who become qualified nursing assistants. Qualified nursing assistants may perform nursing care tasks only for the client who is specified by the RN to receive care.

(2) One nursing assistant must not transfer delegated authority to perform nursing care tasks to another nursing assistant.

[05-07-138, recodified as § 388-101-2400, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-730, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2410 What training is required before staff are qualified to perform delegated tasks?** (1) Before performing delegated tasks, staff must:

(a) Be registered or certified as a nursing assistant (NAR or NAC, respectively);

(b) Complete nurse delegation core training approved by DSHS and receive a certificate; and

(c) Receive client-specific training from the delegating registered nurse.

(2) In addition, registered nursing assistants must complete thirty-two hours of staff training required by WAC 388-101-1680 before doing nursing care tasks. Certified nursing assistants may perform delegated tasks before completing the required thirty-two hours of staff training.

(3) After the staff member completes the required training, the service provider must keep:

(a) Written instructions provided by the delegating registered nurse; and

(b) A copy of the current registration or certification for each employee.

[Statutory Authority: RCW 71A.12.030, 71A.12.080, and Title 71A RCW. 05-10-086, § 388-101-2410, filed 5/3/05, effective 6/3/05. 05-07-138, recodified as § 388-101-2410, filed 3/22/05, effective 3/22/05. 05-05-077, recodified as § 388-101-2310, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-740, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2420 Do nursing assistants need to comply with department of health requirements?** Nursing assistants must comply with department of health (DOH) requirements under chapter 246-840 WAC.

[05-07-138, recodified as § 388-101-2420, filed 3/22/05, effective 3/22/05. 05-05-077, recodified as § 388-101-2320, filed 2/15/05, effective 2/15/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-750, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2430 Who is authorized to provide consent for a client's receiving health care?** (1) Before nursing assistants perform nursing care tasks for a client, the registered nurse must obtain consent from the client or person authorized to give consent.

(2) Under RCW 7.70.065, if a client is unable to give consent or is incapacitated, certain people are authorized to provide consent for a client's receiving health care. These people must be one of the following in this priority order:

(a) The legal guardian, if any;

(b) An individual who holds a durable power of attorney for health care decisions;

(c) The client's spouse;

(d) The client's children who are at least eighteen years of age;

(e) The client's parents; and

(f) The client's adult siblings.

(3) Proof of consent must be kept in the client's files.

[05-07-138, recodified as § 388-101-2430, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-760, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2440 What rights do nursing assistants have concerning the delegation of nursing care tasks?** Nursing assistants have certain rights when nursing care tasks are delegated by the registered nurse.

(1) The nursing assistant:

(a) May consent or refuse to consent to perform a delegated nursing care task; and

(b) Must not receive employer reprisal for refusing to accept the delegation of a nursing care task if the refusal is based on client safety issues.

(2) The service provider must post the toll-free telephone number (1-800-562-6078), established by DSHS' aging and adult services administration, for complaints about the delegation of nursing tasks to nursing assistants. This phone number is on DSHS forms: 13-678B, 13-680 and 13-681.

[05-07-138, recodified as § 388-101-2440, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-770, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2450 Are nursing assistants liable for errors while doing nursing care tasks?** If nursing assistants are following written directions from the delegating nurse, they are not liable for errors in doing nursing care tasks.

[05-07-138, recodified as § 388-101-2450, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-780, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2460 What happens if unqualified staff do a nursing task?** (1) DSHS must impose a civil fine on any service provider who knowingly performs or permits an employee to perform a nursing task without proper delega-

tion. (See chapter 18.88A RCW and chapter 246-840 WAC.) The minimum amount of this fine is two hundred fifty dollars. The maximum fine allowed is one thousand dollars.

(2) When assessing civil fines, DSHS must consider:

- (a) Severity of occurrence;
- (b) Frequency of occurrence; and
- (c) Other relevant factors relating to the occurrence.

[05-07-138, recodified as § 388-101-2460, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-790, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2470 What technical assistance may service providers get from DSHS for nurse delegation requirements?** (1) DSHS must offer technical assistance to service providers for purposes of education and assistance to help service providers comply with nurse delegation requirements and protocols.

(2) The DSHS technical assistance program must include:

- (a) Technical assistance visits where DSHS informs the service provider of violation of law or service provider rules;
- (b) Information about how to get technical assistance;
- (c) Printed information;
- (d) Information and assistance by phone;
- (e) Training meetings;
- (f) Other appropriate methods to provide technical assistance; and
- (g) A list of organizations that provide technical assistance.

[05-07-138, recodified as § 388-101-2470, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-800, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2480 What happens when DSHS finds a service provider in violation of nurse delegation requirements?** (1) Before imposing a civil fine, DSHS may take the following steps after discovering that a service provider is in violation of rules:

- (a) Notify the service provider in writing about the concerns;
- (b) Give the service provider an opportunity to explain circumstances or present additional information that may clarify concerns; and
- (c) Request the service provider to provide additional information, if necessary.

(2) DSHS must inform the service provider in writing about the outcome of findings and any required actions.

[05-07-138, recodified as § 388-101-2480, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-810, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2490 May a service provider have a chance to correct violations before being fined?** The service provider must be given a reasonable period of time to correct violations of nurse delegation requirements before any civil penalty is imposed.

[05-07-138, recodified as § 388-101-2490, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-820, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2500 May civil fines be imposed during technical assistance visits?** A civil fine may be issued during a technical assistance visit if:

- (1) The service provider has previously been found out of compliance for the same statute or rule; or
- (2) The service provider's violation is likely to place a person in danger of death or bodily harm.

[05-07-138, recodified as § 388-101-2500, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-830, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2510 How does DSHS impose a civil fine?** DSHS gives a service provider written notice of any civil fines. This notice must:

- (1) State the amount and reasons for the fine and the applicable law under which the fine is imposed; and
- (2) Inform the service provider of the right to request a hearing.

[05-07-138, recodified as § 388-101-2510, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-840, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2520 When is payment due for a civil fine?** (1) A civil fine becomes due twenty-eight days after the receipt of the written notice of the fine.

(2) **Exception:** If a service provider requests a hearing under chapter 34.05 RCW and RCW 43.20A.215, DSHS must stop the fine while waiting for a final decision on the matter.

[05-07-138, recodified as § 388-101-2520, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-850, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2530 May a service provider disagree with DSHS findings of a violation?** (1) When a service provider disagrees with DSHS' finding of a violation under this chapter, the service provider has the right to have the violation reviewed under the department's dispute resolution process.

(2) No service provider may discriminate or retaliate in any manner against a person who makes a complaint or has cooperated in the complaint investigation.

[05-07-138, recodified as § 388-101-2530, filed 3/22/05, effective 3/22/05. Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-860, filed 10/26/01, effective 1/1/02.]

**WAC 388-101-2540 May a service provider contest a civil fine?** (1) A service provider may contest DSHS' decision to impose a civil fine.

(2) Within twenty-eight days of receiving the decision, the service provider must file a written application for a hearing, showing proof of receipt with the Board of Appeals, P.O. Box 42489, Olympia, WA 98504-2489. The application must include:

- (a) The grounds for contesting the department decision; and
  - (b) A copy of the contested department decision.
- (3) Hearings are governed by chapter 34.05 RCW and RCW 43.20A.215, and chapter 388-02 WAC. If any provision in this section conflicts with chapter 388-02 WAC, the provision in this section governs.

[05-07-138, recodified as § 388-101-2540, filed 3/22/05, effective 3/22/05.  
Statutory Authority: Title 71A RCW. 01-22-020, § 388-820-870, filed 10/26/01, effective 1/1/02.]

## Chapter 388-106 WAC

### LONG-TERM CARE SERVICES

#### WAC

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**WAC 388-106-0005 What is the purpose and scope of this chapter?** This chapter applies to applicants and recipients of long-term care services.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0005, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

- (a) Understood: You express ideas clearly;
- (b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses; or requires some prompting to make self understood;
- (c) Sometimes understood: You have limited ability, but are able;
- (d) Rarely/never understood.

**"Activities of daily living (ADL)"** means the following:

- (a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.
- (b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- (i) Foot care if you are diabetic or have poor circulation; or
- (ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair,

locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

- (d) Over three-fourths of the time.

**"Assistance with body care"** means you need assistance with:

- (a) Application of ointment or lotions;

- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions or preferences regarding ADLs: Decision making is severely impaired; you never/rarely make decisions.

**"Department"** means the state department of social and health services, aging and disability services administration or its designee.

**"Designee"** means area agency on aging.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the activity;
- (b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means after the client's death, the department's activity in recouping funds that were expended for long-term care services provided to the client during the client's lifetime, per WAC 388-527-2742.

**"Home health agency"** means a licensed:

(a) Agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under Medicare, contracted and authorized to provide:

- (i) Private duty nursing; or
- (ii) Skilled nursing services under an approved Medicaid waiver program.

**"Income"** means income as defined under WAC 388-500-0005.

**"Individual provider"** means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

**"Disability"** is described under WAC 388-511-1105.

**"Informal support"** means a person or resource that is available to provide assistance without home and community program funding.

**"Institution"** means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment—includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

**"Medicaid"** is defined under WAC 388-500-0005.

**"Medically necessary"** is defined under WAC 388-500-0005.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 388-500-0005.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Residential facility"** means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period. Your self performance is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Supervision if you received set-up help or arrangements only;

(c) Limited assistance if you sometimes performed the activity yourself and other times needed assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last seven days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers

and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

**"SSI-related"** is defined under WAC 388-500-0005.

**"Status"** means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

**"Supplemental Security Income (SSI)"** means the federal program as described under WAC 388-500-0005.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity (such as giving or holding out an item that you take from others);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

**"You/your"** means the client.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0010, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0015 What long-term care services does the department provide?** The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medical personal care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Medically needy residential waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically needy in-home waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private duty nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter 388-825 through 388-853 WAC.

(16) **Nursing facility.**

(17) **Medicare/Medicaid Integration Project (MMIP)** is a DSHS prepaid managed care program, authorized under 42 CFR Part 438, that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare (Parts A and B) and Medicaid.

[Statutory Authority: RCW 74.08.090, 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.05-19-045, § 388-106-0015, filed 9/15/05, effective 10/16/05. Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0015, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0020 Under the MPC, COPES, MNRW, MNIW, and chore programs, what services are not covered?** The following types of services are not covered under MPC, COPES, MNRW, MNIW, and chore:

(1) Child care.

(2) Individual providers and agency providers must not provide sterile procedures, administration of medications, or other tasks requiring a licensed health professional unless these tasks are provided through nursing delegation, self-directed care or provided by a family member.

(3) Services provided over the telephone.



- (4) Services to assist other household members not eligible for services.
- (5) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (6) Nursing care.
- (7) Pet care.
- (8) Assistance with managing finances.
- (9) Respite.
- (10) Yard care.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0020, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0025 How do I apply for long-term care services?** To apply for long-term care services, you must request an assessment from the department and submit a Medicaid application.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0025, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0030 Where can I receive services?**

You may receive services:

- (1) In your own home.
- (2) In a residential facility, which includes licensed:
  - (a) Adult family homes, as defined in RCW 70.128.010.
  - (b) Boarding homes. Types of licensed and contracted boarding homes include:
    - (i) Assisted living facilities, as defined in WAC 388-110-020;
    - (ii) Enhanced adult residential care facilities, as defined in WAC 388-110-020;
    - (iii) Enhanced adult residential care facilities-specialized dementia care, as defined in WAC 388-110-020; and
    - (iv) Adult residential care facilities, as defined in WAC 388-110-020.
- (3) In a nursing home, as defined in WAC 388-97-005.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0030, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0035 May I receive personal care services through any of the long-term care programs when I am out of the state of Washington?** (1) You may receive personal care assistance through any long-term care programs in WAC 388-106-0015 subsections (1) through (5) when temporarily traveling out of state for less than thirty days, as long as your:

- (a) Individual provider is contracted with the state of Washington;
  - (b) Travel plans are coordinated with the department prior to departure;
  - (c) Services are authorized on your plan of care prior to departure; and
  - (d) Services are strictly for your personal care.
- (2) You may not receive personal care services outside of the United States.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0035, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0040 Who can provide long-term care services?** The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05909.

(2) Home care agencies, who provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-336 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes and boarding homes, who contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0040, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0045 When will the department authorize my long-term care services?** The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given consent for services and approved your plan of care; and
- (4) Have chosen a provider(s), qualified for payment.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0045, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0050 What is an assessment?** An assessment is an inventory and evaluation of abilities and needs based on an in-person interview in your home or your place of residence.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0050, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0055 What is the purpose of an assessment?** The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities;
- (5) Determine availability of informal supports and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0055, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0060 Who must perform the assessment?** The assessment must be performed by the department.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0060, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0065 What is the process for conducting an assessment?** The department:

(1) Will assess you using a department-prescribed assessment tool, titled the comprehensive assessment reporting evaluation (CARE).

(2) May request the assessment be conducted in private. However, you have the right to request that third parties be present (e.g. a friend, a family member, or a legal representative).

(3) Has the right to end the assessment if behaviors by any party are impeding the assessment process. If an assessment is terminated, the department will reschedule.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0065, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0070 Will I be assessed in CARE?** You will be assessed in CARE if you are applying for or receiving COPES, MNIW, MNRW, MPC, chore, respite, adult day health, GAU-funded residential care, PACE, or Private Duty Nursing. You may not be assessed by forms previously used by the department once you have been assessed under CARE.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0070, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0075 How is my need for personal care services assessed in CARE?** To assess your need for personal care services, the department gathers information from you, your caregivers, family members, and other sources. The department will assess your ability to perform:

(1) Activities of daily living (ADL) using self performance, support provided, status and assistance available, as defined in WAC 388-106-0010. Also, the department determines your need for "assistance with body care" and "assistance with medication management," as defined in WAC 388-106-0010; and

(2) Instrumental activities of daily living (IADL) using self performance, difficulty, status and assistance available, as defined in WAC 388-106-0010.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0075, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0080 How is the amount of long-term care services I can receive in my own home or in a residential facility determined?** The amount of long-term care services you can receive in your own home or in a residential facility is determined through a classification system. Twelve classifications apply to clients served in residential and in-home settings. Two additional exceptional care groups apply to clients served in in-home settings. The department has assigned each classification a residential facility rate or a base number of hours you can receive in your own home.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0080, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0085 What criteria does the CARE tool use to place me in one of the classification groups?** The department uses CARE to assess your characteristics.

Based on this assessment, the CARE tool uses the following criteria to place you in one of the classification groups:

- (1) Cognitive performance.
- (2) Clinical complexity.
- (3) Mood/behaviors symptoms.
- (4) Activities of daily living (ADLs).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0085, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0090 How does the CARE tool measure cognitive performance?** (1) The CARE tool uses a tool called the cognitive performance scale (CPS) to evaluate your cognitive impairment. The CPS results in a score that ranges from zero (intact) to six (very severe impairment). Your CPS score is based on:

(a) Whether you are comatose.

(b) Your ability to make decisions, as defined in WAC 388-106-0010 "Decision making."

(c) Your ability to make yourself understood, as defined in WAC 388-106-0010 "Ability to make self understood."

(d) Whether you have short-term memory problem (e.g. can you remember recent events?) or whether you have delayed recall; and

(e) Whether you score as total dependence for self performance in eating, as defined in WAC 388-106-0010 "Self performance of ADLs."

(2) You will receive a CPS score of:

(a) **Zero** when you do not have problems with decision-making ability, making yourself understood, or recent memory.

(b) **One** when you meet one of the following:

(i) Your decision-making ability is scored as modified independence or moderately impaired;

(ii) Your ability to make yourself understood is usually, sometimes, or rarely/never understood; or

(iii) You have a recent memory problem.

(c) **Two** when you meet two of the following:

(i) Your decision-making ability is scored as modified independence or moderately impaired;

(ii) Your ability to make yourself understood is usually, sometimes, or rarely/never understood; and/or

(iii) You have a short-term memory problem or delayed recall.

(d) **Three** when you meet at least two of the criteria listed in subsection (2)(b) of this section and one of the following applies:

(i) Your decision making is moderately impaired; or

(ii) Your ability to make yourself understood is sometimes or rarely/never understood.

(e) **Four** when both of the following criteria applies:

(i) Your decision making is moderately impaired; and

(ii) Your ability to make yourself understood is sometimes or rarely/never understood.

(f) **Five** when your ability to make decisions is scored as severely impaired.

(g) **Six** when one of the following applies:

(i) Your ability to make decisions is severely impaired and you require total dependence in eating; or

(ii) You are comatose.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0090, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0095 How does the CARE tool measure clinical complexity?** The CARE tool places you in the clinically complex classification group only when you have one or more of the following criteria and corresponding ADL scores:

Condition	AND an ADL Score of
ALS (Lou Gehrig's Disease)	>14
Aphasia (expressive and/or receptive)	>=2
Cerebral Palsy	>14
Diabetes Mellitus (insulin dependent)	>14
Diabetes Mellitus (noninsulin dependent)	>14
Emphysema & Shortness of Breath (at rest or exertion) or dizziness/vertigo	>10
COPD & Shortness of Breath (at rest or exertion) or dizziness/vertigo	>10
Explicit terminal prognosis	>14
Hemiplegia	>14
Multiple Sclerosis	>14
Parkinson Disease	>14
Pathological bone fracture	>14
Quadriplegia	>14
Rheumatoid Arthritis	>14
You have one or more of the following skin problems: <ul style="list-style-type: none"> <li>■ Pressure ulcers, with areas of persistent skin redness;</li> <li>■ Pressure ulcers with partial loss of skin layers;</li> <li>■ Pressure ulcers, with a full thickness lost;</li> <li>■ Skin desensitized to pain/pressure;</li> <li>■ Open lesions; and/or</li> <li>■ Stasis ulcers.</li> </ul> AND You require one of the following types of assistance: <ul style="list-style-type: none"> <li>■ Ulcer care;</li> <li>■ Pressure relieving device;</li> <li>■ Turning/reposition program;</li> <li>■ Application of dressing; or</li> <li>■ Wound/skin care.</li> </ul>	>=2
You have a burn(s) and you need one of the following: <ul style="list-style-type: none"> <li>■ Application of dressing; or</li> <li>■ Wound/skin care</li> </ul>	>=2
You have one or more of the following problems: <ul style="list-style-type: none"> <li>■ You are frequently incontinent (bladder);</li> <li>■ You are incontinent all or most of the time (bladder);</li> <li>■ You are frequently incontinent (bowel); or</li> <li>■ You are incontinent all or most of the time (bowel).</li> </ul> AND One of the following applies: <ul style="list-style-type: none"> <li>■ The status of your individual management of bowel bladder supplies is "Uses, has leakage, needs assistance";</li> <li>■ The status of your individual management of bowel bladder supplies is "Does not use, has leakage"; or</li> <li>■ You use any scheduled toileting plan.</li> </ul>	>10
You have a current swallowing problem, and you are not independent in eating.	>10
You have Edema.	>14
You have Pain daily.	>14
You need and receive a Bowel program.	>10
You need Dialysis.	>10
You require IV nutritional support or tube feedings; and  Your total calories received per IV or tube was at least 25%; and  Your fluid intake is greater than 2 cups.	>=2
You need Hospice care.	>14
You need Injections.	>14
You need Intravenous medications.	>10
You need management of IV lines.	>10
You need Ostomy care.	>=2

Condition	AND an ADL Score of
You need Oxygen therapy.	>10
You need Radiation.	>10
You need and receive Passive range of motion.	>10
You need and receive Walking training.	>10
You need Suction treatment.	>=2
You need Tracheostomy care.	>10
You need a Ventilator/respirator	>10
Key: > means greater than. >= means greater than or equal to.	

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0095, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0100 How does the CARE tool measure mood and behaviors?** (1) When you do not meet the criteria for the clinically complex classification group, or the criteria for exceptional care, or for in-home only have a cognitive performance scale score of five or six, the mood and behavior criteria listed in subsection (3) below determines your classification group.

(2) For each behavior that the CARE tool has documented, the department will determine a status as "current" or "past" as defined in WAC 388-106-0010.

(3) CARE places you in the mood and behavior classification group only if you have one or more of the behavior/moods that also meets the listed status, frequency, and alterability as identified in the following chart. No other moods or behaviors documented by CARE will qualify you for the mood and behavior classification.

Behavior/Mood	AND Status, Frequency & Alterability
Assaultive	Current
Combative during personal care	Current
Combative during personal care	In past and addressed with current interventions
Crying tearfulness	Current, frequency 4 or more days per week
Delusions	In past, addressed with current interventions
Depression score >=14	N/A
Disrobes in public	Current and not easily altered
Easily irritable/agitated	Current and not easily altered
Eats nonedible substances	Current
Eats nonedible substances	In past, addressed with current interventions
Hallucinations	Current
Hiding items	In past, addressed with current interventions
Hoarding/collecting	In past, addressed with current interventions
Mental health therapy/program	Need
Repetitive complaints/questions	Current, daily
Repetitive complaints/questions	In past, addressed with current interventions
Repetitive movement/pacing	Current, daily
Resistive to care	Current
Resistive to care	In past, addressed with current interventions
Sexual acting out	Current
Sexual acting out	In past, addressed with current interventions
Spitting	Current and not easily altered
Spitting	In past, addressed with current interventions
Breaks/throws items	Current
Unsafe smoking	Current and not easily altered
Up at night and requires intervention	Current
Wanders exit seeking	Current
Wanders exit seeking	In past, addressed with current interventions

Behavior/Mood	AND Status, Frequency & Alterability
Wanders not exit seeking	Current
Wanders not exit seeking	In past, addressed with current interventions
Yelling/screaming Key: > means greater than. >= means greater than or equal to.	Current, frequency 4 or more days per week

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0100, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0105 How does the CARE tool measure activities of daily living (ADLs)?** (1) CARE determines an ADL score ranging from zero to twenty-eight for each of the following ADLs.

- (a) Personal hygiene;
- (b) Bed mobility;
- (c) Transfers;
- (d) Eating;
- (e) Toilet use;
- (f) Dressing;
- (g) Locomotion in room;
- (h) Locomotion outside room; and
- (i) Walk in room.

(2) The department through the CARE tool determines the ADL score by using the definitions in WAC 388-106-0010 under "Self-performance for ADLs." The CARE tool assigns the following points to the level of self performance for each of the ADLs listed in subsection (1) of this section. For the locomotion in room, locomotion outside of room and walk in room, the department uses the highest score of the three in determining the total ADL score.

ADL Scoring Chart	
If Self Performance is:	Score Equals
Independent	0
Supervision	1
Limited assistance	2
Extensive assistance	3
Total dependence	4
Did not occur/no provider	4
Did not occur/client not able	4
Did not occur/client declined	0

(3) Although assessed by CARE, the department does not score bathing and medication management to determine classification groups.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0105, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0110 How does the CARE tool evaluate me for the exceptional care classification of in-home care?** CARE places you in the exceptional care classifications for the in-home setting when the following criteria are met in either diagram 1 or 2:

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Diagram 1
You have one of the following diagnoses: <ul style="list-style-type: none"> <li>■ Quadriplegia;</li> <li>■ Paraplegia;</li> <li>■ ALS (Amyotrophic Lateral Sclerosis);</li> <li>■ Parkinson's Disease;</li> <li>■ Multiple Sclerosis;</li> <li>■ Comatose;</li> <li>■ Muscular Dystrophy;</li> <li>■ Cerebral Palsy;</li> <li>■ Post Polio Syndrome; or</li> <li>■ TBI (traumatic brain injury).</li> </ul>
AND
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You require at least one of the following: <ul style="list-style-type: none"> <li>■ External catheter;</li> <li>■ Intermittent catheter;</li> <li>■ Indwelling catheter care;</li> <li>■ Bowel program; or</li> <li>■ Ostomy care</li> </ul>
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> <li>■ Active range of motion (AROM); or</li> <li>■ Passive range of motion (PROM).</li> </ul>

Diagram 2
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> <li>■ Active range of motion (AROM); or</li> <li>■ Passive range of motion (PROM).</li> </ul>
AND
All of the following apply: <ul style="list-style-type: none"> <li>■ You require IV nutrition support or tube feeding;</li> <li>■ Your total calories received per IV or tube was greater than 50%; and</li> <li>■ Your fluid intake is greater than 2 cups.</li> </ul>
AND
You need assistance with one of the following, provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> <li>■ Dialysis; or</li> <li>■ Ventilator/respirator.</li> </ul>

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0110, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0115 How does CARE use the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, and ADLs as determined under WAC 388-106-0105 to place me in a classification group**

**for residential facilities?** The CARE tool uses the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-

106-0100, and ADLs as determined under WAC 388-106-0105 to place you into one of the following twelve residential classification groups:

Classification	ADL Score	Group
<b>Group D</b> Cognitive performance score = 4-6 and Clinically complex = yes and Mood/behavior = yes or no	ADL Score 18-28	D High (12)
	ADL Score 13-17	D Med (11)
	ADL Score 2-12	D Low (10)
<b>Group C</b> Cognitive performance score = 0-3 and Clinically complex = yes and Mood/behavior = yes or no	ADL Score 18-28	C High (9)
	ADL Score 9-17	C Med (8)
	ADL Score 2-8	C Low (7)
<b>Group B</b> Mood & behavior = Yes and Clinically complex = no and Cognitive performance score = 0-6	ADL Score 15-28	B High (6)
	ADL Score 5-14	B Med (5)
	ADL Score 0-4	B Low (4)
<b>Group A</b> Mood & behavior = No and Clinically complex = No and Cognitive performance score = 0-6	ADL Score 10-28	A High (3)
	ADL Score 5-9	A Med (2)
	ADL Score 0-4	A Low (1)

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0115, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility?** The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility. The department assigns payment rates to the CARE classification groups. Payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0120, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0125 How does CARE use the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, ADLs as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110, to place me in a classification group for in-home care?** CARE uses the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior as determined under WAC 388-106-0100, ADLs as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following fourteen in-home groups.

Classification	ADL Score	Group	Base Hours of Group
<b>Group E</b> Exceptional care = yes and Mood and behavior = yes or no and Cognitive performance score = 0-6	ADL Score 26-28	E High (14)	420
	ADL Score 22-25	E Med (13)	350

Classification	ADL Score	Group	Base Hours of Group
<b>Group D</b> Cognitive performance score = 4-6 and Clinically complex = yes and Mood and behavior = yes or no <b>OR</b> Cognitive performance score = 5-6 and Clinically complex = no and Mood and behavior = yes or no	ADL Score 18-28	D High (12)	240
	ADL Score 13-17	D Med (11)	190
	ADL Score 2-12	D Low (10)	145
<b>Group C</b> Cognitive performance score = 0-3 and Clinically complex = yes and Mood and behavior = yes or no	ADL Score 18-28	C High (9)	180
	ADL Score 9-17	C Med (8)	140
	ADL Score 2-8	C Low (7)	83
<b>Group B</b> Mood and behavior = yes and Clinically complex = no and Cognitive performance score = 0-4	ADL Score 15-28	B High (6)	155
	ADL Score 5-14	B Med (5)	90
	ADL Score 0-4	B Low (4)	52
<b>Group A</b> Mood and behavior = no and Clinically complex = no and Cognitive performance score = 0-4	ADL Score 10-28	A High (3)	78
	ADL Score 5-9	A Med (2)	62
	ADL Score 0-4	A Low (1)	29

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0125, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for your informal supports, as defined in WAC 388-106-0010, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self Performance	Status	Assistance Available	Value Percentage
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3

Unscheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
	>3/4 time	.3		
Scheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted .	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
			1/2 to 3/4 time	.35
	>3/4 time	.15		
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
	>3/4 time	.05		
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
	>3/4 time	.3		
Key: > means greater than < means less than				

(b) To determine the amount of reduction for informal support, the value percentage is divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is base in-home care hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours for the following shared living circumstances:

(a) If there is more than one client living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(b) If you and your paid provider live in the same household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(c) When there is more than one client living in the same household and your paid provider lives in your household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(4) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
		>3/4 time	2
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

(5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs.

(6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0130, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0135 What are the maximum hours that I can receive for in-home services?** The maximum hours that you may receive is the base hours assigned to your classification group and adjusted per WAC 388-106-0130. For chore program clients, the maximum personal care hours per month the department will pay is one hundred sixteen.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0135, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0140 What will change the maximum hours I can receive?** When you have a change in any of the criteria listed in WAC 388-106-0125 and/or 388-106-0130, the maximum hours you can receive will change.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0140, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0200 What services may I receive under Medicaid personal care (MPC)?** You may be eligible to receive only the following services under Medicaid personal care (MPC):

(1) Personal care services, as defined in WAC 388-106-0010, in your own home and, as applicable, assistance with

personal care tasks while you are out of the home accessing community resources or working.

(2) Personal care services in one of the following residential care facilities:

(a) Adult family homes; or

(b) A licensed boarding home that has contracted with the department to provide adult residential care services.

(3) Nursing services, if you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service planning and delivery.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0200, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0210 Am I eligible for MPC-funded services?** You are eligible for MPC-funded services when the department assesses your needs and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC 388-500-0005. Categorically needy medical institutional programs described in chapter 388-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:



For each Activity of Daily Living, the minimum level of assistance required in:		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist

Bathing	Limited Assistance	One person physical assist
Dressing	Extensive Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0210, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services?** If you are a child applying for MPC services, the department will complete a CARE assessment and:

(1) Consider and document the role of your legally responsible natural/step/adoptive parent(s).

(2) Code your needs as met based on the guidelines outlined in the following table:

		Activities of Daily Living (ADLs)																
Ages		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																		
<b>Medication Management</b>																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Locomotion in Room</b> <sup>Note</sup>																		
Independent, supervision, limited or extensive		■	■	■														
Total		■																
<b>Locomotion Outside Room</b> <sup>Note</sup>																		

		Activities of Daily Living (ADLs)																
Ages		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																		
Independent or supervision		■	■	■	■	■												
Limited or extensive		■	■	■														
Total		■																
Walk in Room <sup>Note</sup>																		
Independent, supervision, limited or extensive		■	■	■														
Total		■																
Bed Mobility																		
Independent, supervision, limited or extensive		■	■															
Total		■																
Transfers																		
Independent, supervision, limited, extensive or total & under 30 pounds (Total & over 30 pounds = no age limit)		■	■															
Toilet Use																		
Support provided for nighttime wetting only (Independent, supervision, limited, extensive, or total)		■	■	■	■	■	■	■										
Independent, supervision, limited, extensive		■	■	■	■	■												
Total		■	■	■														
Eating																		
Independent, supervision, limited, extensive, or total		■	■															
Bathing																		
Independent or supervision		■	■	■	■	■	■	■	■	■	■	■						
Physical assistance all/part		■	■	■	■	■	■	■										
Total		■	■	■	■													
Dressing																		
Independent or supervision		■	■	■	■	■	■	■	■	■	■	■						
Limited or extensive		■	■	■	■	■	■	■										
Total		■	■	■	■													
Personal Hygiene																		
Independent or supervision		■	■	■	■	■	■	■	■	■	■	■						
Limited or extensive		■	■	■	■	■	■	■										
Total		■	■	■	■													
		Instrumental Activities of Daily Living																
Ages		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																		
Telephone																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Transportation																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Shopping																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Wood Supply																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Housework																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Finances																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Meal Preparation																		
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

NOTE: If the activity did not occur, the department codes self performance as total and status as met.

		Ages																
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
<b>Additional guidelines based on age</b>																		
<b>Any foot care needs</b>																		
Status Need met		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Any skin care (other than feet)</b>																		
Status Need met		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Speech/Hearing</b>																		
Score comprehension as understood		■	■															

	Ages																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
<b>Memory</b>																	
Short term memory ok	■	■	■	■	■	■	■	■	■	■	■						
Long term memory ok	■	■	■	■	■	■	■	■	■	■	■						
<b>Depression</b>																	
Select interview = unable to obtain	■	■	■	■	■	■	■	■	■	■	■						
<b>Decision making</b>																	
Rate how client makes decisions = independent	■	■	■	■	■	■	■	■	■	■	■						
<b>Bladder/Bowel</b>																	
Support provided for nighttime wetting only - Individual management = Does not need/use	■	■	■	■	■	■	■	■	■	■	■						
Support provided for daytime wetting - Individual Management = Does not need/use	■	■	■	■	■												

(3) In addition, determine that the status and assistance available are met or partially met over three-fourths of the time, when you are living with your legally responsible natural/step/adoptive parent(s).

(4) Will not code mental health therapy, behaviors, or depression if you are in foster care.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0213, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0220 How do I remain eligible for MPC?** (1) In order to remain eligible for MPC, you must be in need of services in accordance with WAC 388-106-0210 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for MPC change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your MPC services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0220, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0225 How do I pay for MPC?** (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of at least thirty-eight dollars and eighty-four cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of at least fifty-eight dollars and eighty-four cents per month;

(c) An SSI-related person under WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate. You will receive a personal allowance of fifty-eight dollars and eighty-four cents; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0225, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0230 Can I be employed and receive MPC?** You can be employed and receive MPC services if you remain medicaid eligible under the noninstitutional categorically needy program.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0230, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0235 Are there waiting lists for MPC?** There are no waiting lists for MPC. Instead of waiting lists, the department may revise rules to reduce caseload size, hours, rates, or payments in order to stay within the legislative appropriation.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0235, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home?** When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

- (a) You are homebound and live in your own home;
- (b) You are unable to prepare the meal;
- (c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and
- (d) Receiving this meal is more cost-effective than having a paid caregiver.
- (5) Home health aide service tasks in your own home, if the service tasks:
  - (a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;
  - (b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services as described in WAC 388-551-2120 and are in addition to those available services;
  - (c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and
  - (d) Do not replace Medicare home health services.
- (6) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:
  - (a) Live alone in your own home; or
  - (b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.
- (7) Skilled nursing, if the service is:
  - (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and
  - (b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100.
- (8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:
  - (a) Medically necessary under WAC 388-500-0005;
  - (b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
  - (c) Directly medically or remedially beneficial to you; and
  - (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.
- (9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:
  - (a) Adjusting to a serious impairment;
  - (b) Managing personal care needs; or
  - (c) Developing necessary skills to deal with care providers.
- (10) Transportation services, if the service:
  - (a) Provides you access to community services and resources to meet your therapeutic goal;
  - (b) Is not diversional in nature; and
  - (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.
- (11) Nurse delegation services, when:
  - (a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

- (b) Your medical condition is considered stable and predictable by the delegating nurse; and
- (c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

- (a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and
- (b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0300, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility?** If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPES:

- (1) Personal care services as defined under WAC 388-106-0010.
- (2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:
  - (a) Medically necessary under WAC 388-500-0005; and
  - (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and
  - (c) Directly medically or remedially beneficial to you; and
  - (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and
  - (e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

(a) Provides you access to community services and resources to meet a therapeutic goal;

(b) Is not diversional in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0305, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0310 Am I eligible for COPES-funded services?** You are eligible for COPES-funded services if you

meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505, community options program entry system (COPES).

(3) You:

(a) Are not eligible for Medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPES services are provided) which is defined in WAC 388-106-0355(1).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0310, filed 5/17/05, effective 6/17/05.]

#### **WAC 388-106-0315 When do COPES services start?**

Your eligibility for COPES begins the date the department authorizes services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0315, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0320 How do I remain eligible for COPES?** (1) In order to remain eligible for COPES, you must be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for COPES change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your COPES services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0320, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0325 How do I pay for COPES services?** Depending on your income and resources, you may be required to pay participation toward the cost of your care, as outlined in WAC 388-515-1505. If you have nonexempt income that exceeds the cost of COPES services, you may retain the difference. If you are receiving services in:

(1) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(2) In a residential facility, you must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. The department pays the facility for the difference between what you pay and the department-set rate for

the facility. The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0325, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0330 Can I be employed and receive COPES?** You can be employed and receive COPES, per WAC 388-515-1505.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0330, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0335 Are there waiting lists for COPES?** The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Nursing home residents wanting COPES waiver services will be ranked first on the wait list by date of application for services;

(2) Then clients living in the community with a higher level of need, as determined by the CARE assessment, will be ranked higher on the wait list over clients with a lower level of need; and

(3) When two or more clients in the community have equal need levels, the client with the earlier application for services will have priority over later applications for services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0335, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0350 What are nursing facility care services?** You may receive care in a nursing facility, as outlined in chapter 388-97 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0350, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0355 Am I eligible for nursing facility care services?** You are eligible for nursing facility care if the department:

(1) Assesses you in CARE and determines that you meet the functional criteria for nursing facility level of care which means one of the following applies:

(a) You require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis;

(b) You have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup

	Self Performance is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Your need for assistance in any activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose in determining your functional eligibility.		

(c) You have an unmet or partially met need with at least two of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Your need for assistance in any of the activities listed in subsection (c) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

or:

(d) You have a cognitive impairment and require supervision due to one or more of the following: Disorientation, memory impairment, impaired decision making, or wandering and have an unmet or partially met need with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Your need for assistance in any of the activities listed in subsection (d) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(2) Determines that you meet the financial eligibility requirements set through WAC 388-513-1315.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0355, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0360 How do I pay for nursing facility care services?** (1) If you are Medicaid eligible and the nursing facility admits you without a request for assessment from the department, the nursing facility will not:

- (a) Be reimbursed by the department; or
- (b) Be allowed to collect payment, including a deposit or minimum stay fee, from you or your family/representative for any care provided before the date of request for assessment.

(2) If you are eligible for Medicaid-funding nursing facility care, the department pays for your services beginning on the date:

- (a) Of the request for a department assessment; or
- (b) Nursing facility care actually begins, whichever is later.

(3) If you become financially eligible for Medicaid after you have been admitted, the department pays for your nursing facility care beginning on the date of:

- (a) Request for assessment or financial application, whichever is earlier;
- (b) Nursing facility placement; or
- (c) When you are determined financially eligible, whichever is later.

(4) Exception: Payment back to the request date is limited to three months prior to the month that the financial application is received.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0360, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0400 What services may I receive under medically needy residential waiver (MNRW)?** You may be eligible to receive only the following MNRW services in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced residential care, enhanced adult residential care-specialized dementia care or an adult family home:

(1) Personal care services as defined in WAC 388-106-0010.

(2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:

- (a) Medically necessary under WAC 388-500-0005; and
- (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you;
- (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and

(e) In addition to and do not replace the services required by the department's contract with the residential facility.

(3) Training needs identified in CARE or in a professional evaluation that are in addition to and do not replace services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

- (a) Provides you access to community services and resources provided to meet a therapeutic goal;
- (b) Is not diversional in nature;
- (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by the department's contract with a residential facility.

(5) Skilled nursing, when the service is:

- (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
- (b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

- (a) Nursing assessment/reassessment;
- (b) Instruction to care providers and clients;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0400, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0410 Am I eligible for MNRW-funded services?** You are eligible for MNRW-funded services if you choose to receive services in a residential facility and you meet all of the following criteria. The department must assess your needs, using CARE, and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1540.

(3) You are not eligible for Medicaid personal care services (MPC) or COPES.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless MNRW services are provided) which is defined in WAC 388-106-0355(1).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0410, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0415 When do MNRW services start?** Your eligibility for MNRW begins the date the department authorizes services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0415, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0420 How do I remain eligible for MNRW?** (1) In order to remain eligible for MNRW, you must be in need of services in accordance with WAC 388-106-0410 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often

when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for MNRW change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your MNRW services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0420, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0425 How do I pay for MNRW services?** (1) You must use your income to pay for your room and board and services. The amount you pay is determined in WAC 388-515-1540. You are allowed to keep some of your income for personal needs allowance (PNA). The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0425, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0430 Can I be employed and receive MNRW?** You may be employed and receive MNRW per WAC 388-515-1540.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0430, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0435 Are there waiting lists for MNRW?** The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Nursing home residents wanting MN waiver services will be ranked first on the wait list by date of application for services;

(2) Then clients living in the community with a higher level of need, as determined by the department's CARE assessment, will be ranked higher on the wait list over clients with lower level of need; and

(3) When two or more clients in the community have equal need levels, the client with the earlier application for services will have priority over later applications for services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0435, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0500 What services may I receive under medically needy in-home waiver (MNIW)?** You may be eligible to receive only the following medically needy in-home waiver (MNIW) services in your own home:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:



- (a) Are necessary to ensure your health, welfare and safety;
- (b) Enable you to function with greater independence in the home;
- (c) Directly benefit you medically or remedially;
- (d) Meet applicable state or local codes; and
- (e) Are not adaptations or improvements, which are of general utility or add to the total square footage.
- (4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:
  - (a) You are homebound and live in your own home;
  - (b) You are unable to prepare the meal;
  - (c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and
  - (d) Receiving this meal is more cost-effective than having a paid caregiver.
- (5) Home health aide service, if the service tasks:
  - (a) Include assistance with ambulation, exercise, self-administered medications and hands on personal care;
  - (b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services (WAC 388-551-2120) and are in addition to those available services;
  - (c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and
  - (d) Do not replace Medicare home health services.
- (6) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:
  - (a) Live alone in your own home; or
  - (b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.
- (7) Skilled nursing, if the service is:
  - (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and
  - (b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120.
- (8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:
  - (a) Medically necessary under WAC 388-500-0005;
  - (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
  - (c) Directly medically or remedially beneficial to you; and
  - (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.
- (9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:
  - (a) Adjusting to a serious impairment;
  - (b) Managing personal care needs; or
  - (c) Developing necessary skills to deal with care providers.
- (10) Transportation services if you live in your own home, if the service:

- (a) Provides you access to community services and resources to meet a therapeutic goal;
- (b) Is not diversional in nature;
- (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.
- (11) Nurse delegation services when:
  - (a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;
  - (b) Your medical condition is considered stable and predictable by the delegating nurse; and
  - (c) Services are provided in compliance with WAC 246-840-930.
- (12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:
  - (a) Nursing assessment/reassessment;
  - (b) Instruction to you and your providers;
  - (c) Care coordination and referral to other health care providers;
  - (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;
  - (e) File review; and/or
  - (f) Evaluation of health-related care needs affecting service planning and delivery.
- (13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:
  - (a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.
  - (b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0500, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0510 Am I eligible for MNIW-funded services?** You are eligible for MNIW-funded services if you choose to receive services in your own home and you meet all of the following criteria. The department must assess your needs in CARE and determine that:

- (1) You are age:
  - (a) Eighteen or older and blind or have a disability, as defined in WAC 388-511-1105; or
  - (b) Sixty-five or older.
- (2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505;
- (3) You are not eligible for Medicaid personal care services (MPC) or COPES;

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless MNIW services are provided) which is defined in WAC 388-106-0355(1).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0510, filed 5/17/05, effective 6/17/05.]

#### **WAC 388-106-0515 When do MNIW services start?**

Your eligibility for MNIW begins the date the department authorizes services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0515, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0520 How do I remain eligible for MNIW?** (1) In order to remain eligible for MNIW, you must be in need of services in accordance with WAC 388-106-0510 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for MNIW change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your MNIW services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0520, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0525 How do I pay for MNIW?** The amount you pay is determined in WAC 388-515-1550.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0525, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0530 Can I be employed and receive MNIW?** You can be employed and receive MNIW, per WAC 388-515-1550.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0530, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0535 Are there waiting lists for MNIW?** The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Nursing home residents wanting MN waiver services will be ranked first on the wait list by date of application for services;

(2) Then clients living in the community with a higher level of need as determined by the department's CARE assessment will be ranked higher on the wait list over clients with lower level of need; and

(3) When two or more clients in the community have equal need levels, the client with the earlier application for services will have priority over later applications for services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0535, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0600 What services may I receive under chore?** You may receive personal care services in your own home and, as applicable, assistance with personal

care tasks while you are out of the home accessing community resources or working.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0600, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0610 Am I eligible for chore-funded services?** To be eligible for chore-funded services you must meet all of the following criteria:

(1) Be grandfathered on the chore program before August 1, 2001 and have continued to receive chore without a break in service.

(2) Not be eligible for MPC or COPES.

(3) Be eighteen years of age or older.

(4) Have an unmet or partially met need with at least one of the following activities of daily living, as defined in WAC 388-106-0010.

For each Activity of Daily Living, the minimum level of assistance required is:		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A
Your need for assistance in any of the activities listed in this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(5) Have net household income (as described in WAC 388-450-0005 and 388-450-0040) not exceeding:

(a) The sum of the cost of your chore services; and

(b) One-hundred percent of the federal poverty level (FPL) adjusted for family size.

(6) Have resources, as described in chapter 388-470 WAC, which do not exceed ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person

family. (Note: One thousand dollars for each additional family member may be added to these limits.); and

(7) Not transfer assets on or after November 1, 1995 for less than fair market value, as described in WAC 388-513-1365.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0610, filed 5/17/05, effective 6/17/05.]

#### **WAC 388-106-0615 When do chore services start?**

Your eligibility for chore services begins the date the department authorizes services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0615, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0620 How do I remain eligible for chore?** (1) In order to remain eligible for chore, you must be in need of services in accordance with WAC 388-106-0610 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for chore change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your chore services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0620, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0625 How do I pay for chore?** You may retain an amount equal to one hundred percent of the federal poverty level, adjusted for family size, as the home maintenance allowance and pay the difference between the FPL and your nonexempt income. Exempt income includes:

- (1) Income listed in WAC 388-513-1340;
- (2) Spousal income allocated and actually paid as participation in the cost of the spouse's community options program entry system (COPES) services;
- (3) Amounts paid for medical expenses not subject to third party payment;
- (4) Health insurance premiums, coinsurance or deductible charges; and
- (5) If applicable, those work expense deductions listed in WAC 388-106-0630(2).

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0625, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0630 Can I be employed and receive chore?** If you are not Medicaid eligible due to your earned income and resources and are receiving chore personal care services:

- (1) You may be required to pay participation, per WAC 388-106-0625, for any earned income above one hundred percent of the federal poverty level.
- (2) The department will exempt fifty percent of your earned income after work expense deductions. Work expense deductions are:
  - (a) Personal work expenses in the form of self-employment taxes (FICA); and income taxes when paid;

(b) Payroll deductions required by law or as a condition of employment in the amounts actually withheld;

(c) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars;

(d) Expenses necessary for continued employment such as tools, materials, union dues, transportation to service customers not furnished by the employer; and

(e) Uniforms needed on the job and not suitable for wear away from the job.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0630, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0650 What services may I receive under volunteer chore?** Volunteer chore is a state-funded program which provides volunteer assistance with household tasks and:

(1) Assists people who need but are not eligible for DSHS services.

(2) Complements DSHS services by using volunteer assistance to perform tasks which do not require specially-skilled personnel.

(3) Provides assistance with housework, laundry, shopping, cooking, moving, minor home repair, yard care, limited personal care, monitoring and transportation.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0650, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0655 Am I eligible to receive volunteer chore services?** You may receive volunteer chore services if you are:

- (1) Eighteen years of age or older;
- (2) Living at home unless you are moving from a residential facility to home and need assistance moving;
- (3) Unable to perform certain personal care tasks due to functional or cognitive impairment;
- (4) Financially unable to purchase services from a private provider;
- (5) Not receiving services under COPES, MNIW, MPC, or chore because you:
  - (a) Do not meet the eligibility requirements; or
  - (b) Decline these services.
- (6) In need of assistance from volunteer chore in addition to or in substitution of paid services under COPES, MNIW, MPC, or chore.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0655, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0700 What services may I receive under PACE?** Under their contract with the department, the PACE provider develops an individualized plan of care, as defined in 42 CFR 460.106, that integrates necessary long-term care, medical services, mental health services, and alcohol and substance abuse treatment services.

(1) The care plan includes, but is not limited to any of the following long-term care services:

- (a) Care coordination;
- (b) Home and community-based services:
  - (i) Personal (in-home) care;
  - (ii) Residential care.

(c) And, if necessary, nursing facility care.

(2) The care plan may also include, but is not limited to, the following medical services:

- (a) Primary medical care;
  - (b) Vision care;
  - (c) End of life care;
  - (d) Restorative therapies, including speech, occupational, and physical therapy;
  - (e) Oxygen therapy;
  - (f) Audiology (including hearing aids);
  - (g) Transportation;
  - (h) Podiatry;
  - (i) Durable medical equipment (e.g., wheelchair);
  - (j) Dental care;
  - (k) Pharmaceutical products;
  - (l) Immunizations and vaccinations;
  - (m) Emergency room visits and inpatient hospital stays.
- (3) The care plan may also include any other services determined necessary by the interdisciplinary team to improve and maintain your overall health status.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0700, filed 5/17/05, effective 6/17/05.]

#### **WAC 388-106-0705 Am I eligible for PACE services?**

To qualify for Medicaid-funded PACE services, you must apply for an assessment by contacting your local home and community services office. The department will assess and determine whether you:

- (1) Are age:
  - (a) Fifty-five or older, and blind or have a disability, as defined in WAC 388-511-1105, SSI-related eligibility requirements; or
  - (b) Sixty-five or older.
- (2) Need nursing facility level of care as defined in WAC 388-106-0355. Note: If you are already enrolled, but no longer need nursing facility care, you may still be eligible for PACE services if the department reasonably expects you to need nursing facility care within the next six months in the absence of continued PACE coverage;
- (3) Live within the designated service area of the PACE provider;
- (4) Meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505;
- (5) Not be enrolled in any other medical coverage plan that purchases services on a prepaid basis (e.g., prepaid health plan); and
- (6) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0705, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0710 How do I pay for PACE services?** Depending on your income and resources, you may be required to pay for part of the PACE services. The department's financial worker will determine what amount, if any, you must contribute if you decide to enroll. The department pays the PACE provider the remaining amount.

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[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0710, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0715 How do I disenroll from the PACE program?** (1) You may choose to voluntarily disenroll from the PACE program without cause at any time. To do so, you must give the PACE provider written notice. If you give notice:

- (a) Before the fifteenth of the month, disenrollment is effective at the end of the month; or
- (b) After the fifteenth, disenrollment is not effective until the end of the following month.

(2) You may also be involuntarily disenrolled from the program by the PACE provider, if you:

- (a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless the PACE provider agrees to a longer absence due to extenuating circumstances;
- (b) Engage in disruptive or threatening behavior such that the behavior jeopardizes your health or safety, or the safety of others;
- (c) Fail to comply with your plan of care or the terms of the PACE enrollment agreement;
- (d) Fail to pay or make arrangements to pay your part of the costs after the thirty-day grace period;
- (e) Become financially ineligible for Medicaid services, unless you choose to pay privately;
- (f) Are enrolled with a provider that loses its license and/or contract; or
- (g) No longer meet the nursing facility level of care requirement as defined in WAC 388-106-0205 and are not deemed PACE eligible.

(3) For any of the above reasons, the PACE provider must give you written notice, explaining that they are terminating benefits. If the provider gives you notice:

- (a) Before the fifteenth of the month, then you may be disenrolled at the end of the month; or
- (b) After the fifteenth, then you may be disenrolled at the end of the following month.

(4) Before the PACE provider can involuntarily disenroll you from the PACE program, the department must review and approve all proposed involuntary disenrollments.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0715, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0720 What services may I receive under MMIP?** (1) Once you are determined eligible, your care plan could include, but is not limited to, any of the following long-term care services:

- (a) Care coordination;
- (b) Personal care services in your own home or in a residential facility;
- (c) Home health aide;
- (d) Adult day services;
- (e) Environmental modifications;
- (f) Personal emergency response system (PERS);
- (g) Skilled nursing;
- (h) Specialized medical equipment and supplies;
- (i) Home delivered meals;
- (j) Residential care;
- (k) Nursing facility care.

(2) The care plan may also include, but is not limited to, the following medical services:

- (a) Primary medical care;
  - (b) Restorative therapies, including speech, occupational, and physical therapy;
  - (c) Nursing services;
  - (d) Durable medical equipment (e.g., wheelchair);
  - (e) Pharmaceutical products;
  - (f) Immunizations and vaccinations;
  - (g) Vision care;
  - (h) Emergency room visits and inpatient hospital stays.
- The care plan may also include other services determined necessary by the interdisciplinary team to improve and maintain your overall health status.

[Statutory Authority: RCW 74.08.090, 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.05-19-045, § 388-106-0720, filed 9/15/05, effective 10/16/05.]

**WAC 388-106-0725 Am I eligible for MMIP services?** To qualify for Medicaid-funded MMIP services, you must:

- (1) Be age sixty-five or older;
  - (2) Live within the designated MMIP service area;
  - (3) Be eligible for Medicare (Parts A and B);
  - (4) Be eligible for Medicaid-funded medical and/or long-term care services.
- (a) To be eligible to receive long-term care services under this program, you must meet functional eligibility for one of the long-term care programs per WAC 388-106-0210(2), WAC 388-106-0310(4), or WAC 388-106-0355(1) and financial eligibility for noninstitutional categorically needy, or institutional categorically needy as described in chapter 388-513 WAC and WAC 388-515-1505.
- (b) Ongoing functional and financial eligibility for long-term care services will be determined at least annually by the state.
- (c) If you are determined not eligible for long-term care services, you may be eligible to receive medical services under MMIP; and
- (5) Not be enrolled in any other medical coverage plan that purchases services on a prepaid basis (e.g., prepaid health plan).

[Statutory Authority: RCW 74.08.090, 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.05-19-045, § 388-106-0725, filed 9/15/05, effective 10/16/05.]

**WAC 388-106-0730 How do I pay for MMIP services?** Depending on your income and resources, you may be required to pay for part of your MMIP services. The department's financial worker will determine what amount, if any, you must contribute toward the cost of your care.

[Statutory Authority: RCW 74.08.090, 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.05-19-045, § 388-106-0730, filed 9/15/05, effective 10/16/05.]

**WAC 388-106-0735 How do I disenroll from MMIP?** You may choose to disenroll from MMIP for any reason at any time. See WAC 388-538-061 for additional information on ending enrollment in MMIP.

[Statutory Authority: RCW 74.08.090, 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.05-19-045, § 388-106-0735, filed 9/15/05, effective 10/16/05.]

**WAC 388-106-0740 What is the fair hearing process for enrollee appeals of managed care organization actions?** See WAC 388-538-112 for additional information about the fair hearing process.

[Statutory Authority: RCW 74.08.090, 42 C.F.R. 441.302(a), Social Security Act, Section 1915(c) waiver rules, 42 C.F.R. 438.05-19-045, § 388-106-0740, filed 9/15/05, effective 10/16/05.]

**WAC 388-106-0800 What adult day care services may I receive?** You may receive the following services in an adult day care:

- (1) Core services, which include assistance with:
  - (a) Locomotion outside of room, locomotion in room, walk in room;
  - (b) Body care;
  - (c) Eating;
  - (d) Repositioning;
  - (e) Medication management that does not require a licensed nurse;
  - (f) Transfer;
  - (g) Toileting;
  - (h) Personal hygiene at a level that ensures your safety and comfort while in attendance at the program; and
  - (i) Bathing at a level that ensures your safety and comfort while in attendance at the program.
- (2) Social services on a consultation basis, which may include:
  - (a) Referrals to other providers for services not within the scope of Medicaid reimbursed adult day care services;
  - (b) Caregiver support and education; or
  - (c) Assistance with coping skills.
- (3) Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without a physician's order. Examples include:
  - (a) Obtaining baseline and routine monitoring information on your health status, such as vital signs, weight, and dietary needs;
  - (b) General health education such as providing information about nutrition, illnesses, and preventative care;
  - (c) Communicating changes in your health status to your caregiver;
  - (d) Annual and as needed updating of your medical record; or
  - (e) Assistance as needed with coordination of health services provided outside of the adult day care program.
- (4) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without a physician's order. These services are planned for and provided based on your abilities, interests, and goals. Examples include:
  - (a) Recreational activities;
  - (b) Diversionary activities;
  - (c) Relaxation therapy;
  - (d) Cognitive stimulation; or
  - (e) Group range of motion or conditioning exercises.

(5) General health education that an unlicensed person can provide or that a licensed person can provide with or without a physician's order, including but not limited to topics such as:

- (a) Nutrition;
- (b) Stress management;
- (c) Disease management skills; or
- (d) Preventative care.

(6) A nutritional meal and snacks are provided every four hours, including a modified diet if needed and within the scope of the program, as provided under WAC 388-71-0768;

(7) Supervision and/or protection if needed for your safety;

(8) Assistance with arranging transportation to and from the program; and

(9) First aid and provisions for obtaining or providing care in an emergency. NOTE: If you require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of your physician, consider adult day health services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0800, filed 5/17/05, effective 6/17/05.]

#### **WAC 388-106-0805 Am I eligible for adult day care?**

(1) If you receive COPES or MNIW, you may be eligible for adult day care as a waiver service if you are assessed as having an unmet need for one or more of the following core services:

- (a) Personal care services;
- (b) Routine health monitoring with consultation from a registered nurse;
- (c) General therapeutic activities; or
- (d) Supervision and/or protection if required for your safety.

(2) You are not eligible for adult day care if you receive COPES or MNIW and you:

- (a) Can independently perform or obtain the services provided at an adult day care center;
- (b) Have unmet needs that can be met through the COPES or MNIW program more cost effectively without authorizing day care services;
- (c) Have referred care needs that:
  - (i) Exceed the scope of authorized services that the adult day care center is able to provide;
  - (ii) Can be met in a less structured care setting; or
  - (iii) Are being met by paid or unpaid caregivers.
- (d) Live in a nursing home, boarding home, adult family home, or other licensed institutional or residential facility; or
- (e) Are not capable of participating safely in a group care setting.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0805, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0810 What adult day health services may I receive?** You may receive the following adult day health services:

- (1) All core services under WAC 388-106-0800;
- (2) Skilled nursing services other than routine health monitoring with nurse consultation;
- (3) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech-language

pathology or audiology, as defined under chapters 18.74, 18.59, and 18.35 RCW, and

(4) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0810, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0815 Am I eligible for adult day health?** (1) You are eligible for adult day health services if you meet all of the following criteria. You are:

- (a) Age eighteen years or older.
- (b) Enrolled in one of the following medical assistance programs:
  - (i) Categorically needy (CNP);
  - (ii) Categorically needy qualified Medicare beneficiaries (CNP-QMB);
  - (iii) General assistance—Expedited Medicaid disability (GA-X); or
  - (iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(c) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714; and

- (i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and
- (ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and
- (iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(d) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

- (2) You are not eligible for adult day health if you:
  - (a) Can independently perform or obtain the services provided at an adult day health center;
  - (b) Have referred care needs that:
    - (i) Exceed the scope of authorized services that the adult day health center is able to provide;
    - (ii) Do not need to be provided or supervised by a licensed nurse or therapist;
    - (iii) Can be met in a less structured care setting; or
    - (iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.
  - (c) Live in a nursing home or other institutional facility; or
  - (d) Are not capable of participating safely in a group care setting.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-0815, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0900 What services may I receive under GAU-funded residential care?** You may receive personal care services in an adult family home or a licensed boarding home contracted with the department to provide adult residential care services. You may also receive nurse delegation services under this program.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0900, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0905 Am I eligible to receive GAU-funded residential care services?** You are eligible to receive GAU-funded residential care services if:

- (1) You meet financial eligibility requirements for general assistance unemployable (GAU), described in WAC 388-400-0025;
- (2) You are not eligible for services under COPES, MNRW, or MPC; and
- (3) You are assessed in CARE and meet the functional criteria outlined in WAC 388-106-0210(2).

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0905, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0950 What services may I receive under the residential care discharge allowance?** The residential care discharge allowance is a one-time payment used to help you establish or resume living in your own home. You may receive up to eight hundred and sixteen dollars to cover necessary equipment, remodeling, rent, and utilities.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0950, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-0955 Am I eligible for residential care discharge allowance?** You are eligible for a residential discharge allowance if you:

- (1) Receive long-term care services from home and community services;
- (2) Are being discharged from a hospital, nursing facility, a licensed boarding home, or adult family home to your own home;
- (3) Do not have other programs, services, or resources to assist you with these costs; and
- (4) Have needs beyond what is covered under the community transition service (under COPES, MNRW, and MNIW).

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-0955, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1000 What is the intent of WAC 388-106-1000 through 388-106-1055?** The intent of WAC 388-106-1000 through 388-106-1055 is to:

- (1) Describe the eligibility requirements under which an adult age eighteen or older may receive private duty nursing (PDN) services through the department's aging and disability services administration (ADSA);
- (2) Provide assistance to clients and enable families to support clients in their own homes; and
- (3) Describe the requirements clients and their families, home health agencies, and privately contracted registered nurses (RNs) and licensed practical nurses (LPNs) must meet in order for services to be authorized for PDN.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80, 05-24-091, § 388-106-1000, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1005 What services may I receive under private duty nursing (PDN)?** PDN is a program that provides skilled nursing care if you have complex medical needs that cannot be met through other services. PDN is an

alternative to institutional care and is the program of last resort.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80, 05-24-091, § 388-106-1005, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1010 Am I eligible for Medicaid-funded private duty nursing services?** In order to be eligible for Medicaid-funded PDN, you must:

- (1) Be financially eligible, which means you:
  - (a) Meet Medicaid requirements under the categorically needy program or the medically needy program (MNP).
  - (b) Use private insurance as first payer, as required by Medicaid rules. Private insurance benefits, which cover hospitalization and in-home services, must be ruled out as the first payment source to PDN.
  - (2) Be medically eligible, which means an ADSA department's community nurse consultant (CNC) or ADSA's division of disabilities services' (DDS) nursing care consultant (NCC) must assess you using the CARE assessment and the PDN skilled nursing task log for initial eligibility determination and thereafter every six months, and determine that you:
    - (a) Require care in a hospital or meet nursing facility level of care, as defined in WAC 388-106-0310; and
    - (b) Have unmet skilled nursing needs that cannot be met in a less costly program or less restrictive environment; and
    - (c) Are not able to have your care tasks provided through nurse delegation, WAC 246-840-910 through 246-840-970; through COPES skilled nursing, WAC 388-515-1505; or through self-directed care RCW 74.39.050; and
    - (d) Have a complex medical need that requires four or more hours every day of continuous skilled nursing care which can be safely provided outside a hospital or nursing facility; and
    - (e) Require skilled nursing care that is medically necessary, per WAC 388-500-0005; and
    - (f) Be able to supervise your care (provider) or have a guardian who is authorized to supervise your care; and
    - (g) Have family or other appropriate informal support who is responsible for assuming a portion of your care; and
    - (h) Have your primary care physician or ARNP document your medical stability and appropriateness for PDN and:
      - (i) Provide orders for medical services; and
      - (ii) Document approval of the service provider's PDN plan of care.
  - (i) Do not have other resources or means for obtaining this service; and
  - (j) Are dependant upon technology every day, with at least one of the following skilled care needs:
    - (i) You need mechanical ventilation, and the use of a mechanical device to fill the lungs with oxygenated air and then allow time for passive exhalation; or
    - (ii) You need complex respiratory support, which means that:
      - (A) You require two of the following treatment needs:
        - (I) Postural drainage and chest percussion; or
        - (II) Application of respiratory vests; or
        - (III) Nebulizer treatments with or without medications;
      - (B) Intermittent positive pressure breathing; or

(V) O2 saturation measurement with treatment decisions dependent on the results; and

(B) Your treatment needs must be assessed and provided by an RN or LPN; and

(C) Your treatment needs cannot be nurse delegated or self-directed;

(iii) You need tracheostomy care, and tracheal suctioning;

(iv) You need intravenous/parenteral administration of multiple medications, and care is occurring on a continuing or frequent basis; or

(v) You need intravenous administration of nutritional substances, and care is occurring on a continuing or frequent basis.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1010, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1020 How do I pay for my PDN services?** You are not required to pay participation for PDN services, but the cost of services is subject to estate recovery, under chapter 388-527 WAC. If you are also receiving other services (e.g. COPEs), you may be responsible for paying participation as required under WAC 388-515-1505, 388-515-1540, or 388-515-1550. Your financial worker will inform you about your participation requirements for those services.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1020, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1025 Who can provide my PDN services?** In addition to a family member(s) or an individual provider providing self-directed care under RCW 74.39.050 or an individual provider or home care agency caregiver providing nurse delegation per WAC 246-840-910 through 246-840-970:

(1) A home health agency licensed by the Washington state department of health can provide your PDN services as long as it also has a PDN contract with DSHS's aging and disability services administration.

(2) If a home health agency described in subsection (1) is not willing to provide your PDN services, or is not available due to your geographic location, an ADSA private registered nurse (RN) or licensed practical nurse (LPN) who meets the requirements of WAC 388-106-1040 may be able to provide your PDN services.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1025, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1030 Are there limitations or other requirements for PDN?** The limits to PDN services are:

(1) Your PDN services can be authorized for four to sixteen hours per day, except as noted in WAC 388-106-1045(4). This authorization is based on a combination of skilled nursing tasks identified in CARE, the department designated PDN skilled nursing task log or equivalent which has been approved by ADSA prior to use, and detailed information provided to CNC or NCC. The CNC or NCC determines initial eligibility for PDN, up to a maximum of sixteen hours per day. After the initial determination of eligibility is made by the CNC or NCC, the PDN skilled nursing task log or its

approved equivalent will be initiated and completed by the agency or private nurse(s) for fourteen days and submitted to the CNC or NCC for review. At the end of the fourteen-day review period, a final determination will be made on the number of PDN hours required to meet your care needs. PDN skilled task logs or their approved equivalent will also be completed for fourteen days prior to the six-month reassessment for review by the CNC or NCC to determine ongoing eligibility and required PDN hours.

(2) Trained family members must provide for any hours above your assessment determination, or you or your family must pay for these additional hours.

(3) In instances where your family is temporarily absent due to vacations, additional PDN hours must be:

(a) Paid for by you or your family; or

(b) Provided by other trained family members. If this is not possible, you may need placement in a long-term care facility during their absence.

(4) You may use respite care if you and your unpaid family caregiver meet the eligibility criteria defined in WAC 388-106-1210.

(5) You may receive additional hours, up to thirty days only when:

(a) Your family is being trained in care and procedures;

(b) You have an acute episode that would otherwise require hospitalization;

(c) Your caregiver is ill or temporarily unable to provide care; or

(d) There is a family emergency.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1030, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1035 What requirements must a home health agency meet in order to provide and get paid for my PDN?** A home health agency must:

(1) Be licensed by the Washington state department of health and have a contract to provide private duty nursing services with aging and disability services administration;

(2) Operate under physician orders;

(3) Develop and follow a detailed service plan that is reviewed and signed at least every six months by the client's physician;

(4) Initiate and complete the PDN skilled nursing task log or approved equivalent for fourteen days and submitted to the CNC or NCC for review for initial eligibility determination and fourteen days prior to the six-month reassessments;

(5) Meet all documentation requirement required by DOH In-home licensing, WAC 246-335-055, 246-335-080, and 246-335-110; and

(6) Submit timely and accurate invoices to the social services payment system (SSPS).

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1035, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1040 What requirements must a private duty RN, or LPN under the supervision of an RN, meet in order to provide and get paid for my PDN services?** In order to be paid by the department, a private RN under the supervision of a physician/ARNP, or an LPN under the supervision of an RN, must:



- (1) Have a license in good standing, per RCW 18.79.030 (1)(3);
- (2) Complete a PDN contract with ADSA;
- (3) Provide services according to the plan of care under the supervision/direction of a physician;
- (4) Complete a background inquiry application. This will require fingerprinting if the RN or LPN has lived in the state of Washington less than three years;
- (5) Have no conviction for a disqualifying crime, as stated in RCW 43.43.830 and 43.43.842 and WAC 388-71-0500 through 388-71-05640 series;
- (6) Have no stipulated finding of fact and conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry with a finding of abuse, neglect, abandonment or exploitation of a minor or vulnerable adult;
- (7) Meet provider requirements under WAC 388-71-0510, 388-71-0515, 388-71-0540, 388-71-0551, and 388-71-0556;
- (8) Complete time sheets monthly;
- (9) Complete documentation regarding all PDN services provided per the plan of care as required in WAC 388-502-0020 and 246-840-700;
- (10) The PDN skilled nursing task log or its approved equivalent must be initiated and completed by the licensed nurse for fourteen days and submitted to the CNC or NCC for review for initial eligibility determination and fourteen days prior to the six-month reassessment determination. The licensed nurse is responsible to submit these logs to the NCC or CNC when they are completed; and
- (11) Submit timely and accurate invoices to SSPS.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1040, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1045 Can I receive PDN services in a licensed adult family home (AFH)?** You may be eligible to receive PDN services if you are residing in an adult family home (AFH) if the AFH provider (owner and operator) meets the following requirements:

- (1) Possesses current Washington state registered nurse license in good standing;
- (2) Signs a contract amendment with ADSA in which the provider agrees to ensure provision of twenty-four-hour personal care and nursing care services. Nursing care service will be provided in accordance with chapter 18.79 RCW;
- (3) Provides your PDN service through an RN, or LPN under the supervision of an RN. PDN services are based on the CARE assessment, the department designated PDN skilled task log or its approved equivalent, and other documentation which determines eligibility and the number of PDN hours to be authorized;
- (4) Provides the PDN services to you. Your service plan may be authorized for four to eight hours per day and cannot exceed a maximum of eight PDN care hours per day based on the CARE assessment, the department designated PDN skilled task log or its approved equivalent, and other documentation;
- (5) Have a nursing service plan prescribed by your primary physician or ARNP. The physician/ARNP is responsible for:

- (a) Overseeing your plan of care, which must be updated at least every six months;
- (b) Monitoring client's medical stability; and
- (6) Document the services provided per the plan of care and the department designated PDN skilled task log or its approved equivalent at initial eligibility determination and fourteen days prior to the six-month reassessment determination and other documentation; and
- (7) Keep records in accordance with AFH licensing and contract requirements.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1045, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1050 May I receive other long-term care services in addition to PDN?** (1) In addition to PDN services, you may be eligible to receive care through community options program entry system (COPES), medically needy residential waiver (MNRW), medically needy in-home waiver (MNIW), or Medicaid personal care (MPC), for unmet personal needs not performed by your family/informal support system.

(2) If you receive personal care services in addition to PDN services, you cannot receive your personal care and household tasks from an individual provider, personal aide, or home care agency provider at the same time that your PDN provider is providing your care. The agency or privately contracted nurse is responsible for providing personal care and/or household tasks that occur during the time that they are providing your PDN services, unless you have an informal support that is providing or assisting you at the same time.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1050, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1055 Can I choose to self-direct my care if I receive PDN services?** You may choose to self-direct part of your health-related tasks to an individual provider, as outlined in RCW 74.39.050. You may also still receive PDN services, if you meet the PDN eligibility requirements.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 440.80. 05-24-091, § 388-106-1055, filed 12/6/05, effective 1/6/06.]

**WAC 388-106-1100 What services can I receive under the Senior Citizens' Services Act (SCSA) fund?** You may receive community-based services, described in RCW 74.38.040.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1100, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1105 How do I apply for SCSA-funded services?** To receive SCSA-funded services, you or your representative must:

- (1) Complete and submit a department application form, providing complete and accurate information; and
- (2) Promptly submit a written report of any changes in income or resources. For the definition of income and resources, refer to WAC 388-500-0005.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1105, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1110 Am I eligible for SCSA-funded services at no cost?** To be eligible for SCSA-funded services at no cost, you must:

- (1) Be age:
  - (a) Sixty-five or older; or
  - (b) Sixty or older, and:
    - (i) Either unemployed, or
    - (ii) Working twenty hours a week or less;
- (2) Have a physical, mental, or other type of impairment, which without services would prevent you from remaining in your home;
- (3) Have income at or below forty percent of the state median income (SMI), based on family size; and
- (4) Have nonexempt resources (including cash, marketable securities, and real or personal property) not exceeding ten thousand dollars for a single person or fifteen thousand for a family of two, increased by one thousand dollars for each additional family member of the household. Household means a person living alone or a group of people living together.

(5) If you have income over forty percent of SMI, you may be eligible for services on a sliding fee basis.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1110, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1115 What income and resources are exempt when determining eligibility?** The following income and resources, regardless of value, are exempt when determining whether you are eligible for SCSA-funded services:

- (1) Your home, and the lot it is upon;
- (2) Garden produce, livestock, and poultry used for home consumption;
- (3) Program benefits which are exempt from consideration in determining eligibility for needs based programs (e.g., uniform relocation assistance, Older Americans Act funds, foster grandparents' stipends or similar monies);
- (4) Used and useful household furnishings, personal clothing, and automobiles;
- (5) Personal property of great sentimental value;
- (6) Personal property used by the individual to earn income or for rehabilitation;
- (7) One cemetery plot for each member of the family unit;
- (8) Cash surrender value of life insurance;
- (9) Real property held in trust for an individual Indian or Indian tribe; and
- (10) Any payment received from a foster care agency for children in the home.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1115, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1120 What if I am not eligible to receive SCSA-funded services at no cost?** (1) Even if your income is above the forty percent SMI limit to receive SCSA-funded services at no cost, you may receive SCSA-subsidized services. The department uses a sliding fee schedule to determine what percentage the department pays for the cost of your services. You pay the remaining amount, but not more than the usual rate paid for services, as negotiated by the

AAA or the department. The formula for determining the department's share of the cost of the services is:

100% State Median Income (SMI) - Household Income x 100

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100% - 40% SMI

(2) Service providers must be responsible for collecting fees owed by eligible persons and reporting to area agencies all fees paid or owed by eligible persons.

(3) Some services are provided at no charge regardless of income or need requirements. These services include, but are not limited to, nutritional services, health screening, services under the long-term care ombudsman program, and access services. Note: Well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1120, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1200 What definitions apply to respite care services?** The following definitions apply to respite care services:

"Caregivers" means a spouse, relative, or friend who has primary responsibility for the daily care of an adult with a functional disability without receiving payment for services provided.

"Continuous care or supervision" means daily assistance or oversight of an adult with a functional disability.

"Functionally disability" means a condition requiring substantial assistance in completing activities of daily living and community living skills.

"Participant" means an adult with a functional disability who needs substantial daily continuous care or supervision.

"Service provider" means an individual, agency, or organization under contract to the area agency on aging (AAA) or its subcontractor.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1200, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1205 What are respite care services?** Respite services relieve unpaid caregivers by providing temporary care or supervision to adults with a functional disability.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1205, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1210 Who is eligible to receive respite care services?** (1) To be eligible to receive respite care services, the caregivers must:

- (a) Have primary responsibility for the daily continuous care or supervision of an adult with a functional disability;
- (b) Provide a minimum of an average of twelve hours per day for care or supervision;

(c) Not be compensated for the care; and

(d) Be assessed as being at risk of placing the participant in a long-term care facility if home and community support services, including respite care, are not available.

(2) An eligible participant is an adult who:

(a) Has a functional disability;

(b) Needs daily substantial continuous care or supervision; and

(c) Is assessed as requiring placement in a long-term care facility if home and community support services, including respite care, are not available.

(3) The area agency on aging (AAA) determines how many hours of continuous care or supervision a day an unpaid caregiver must provide to a participant to become eligible for respite care services, as long as it is a minimum of twelve hours per day, as outlined in subsection (1)(b) of this section.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1210, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1215 Who may provide respite care services?** Respite care providers include, but are not limited to the following:

- (1) Nursing homes (chapter 388-97 WAC).
- (2) Adult day services, which includes adult day care and adult day health.
- (3) Home health/care agencies.
- (4) Hospitals.
- (5) Licensed residential care facilities such as boarding homes, adult family homes, and assisted living facilities.
- (6) Providers such as volunteer chore workers, senior companions, and individual providers.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1215, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1220 How are respite care providers reimbursed for their services?** The department reimburses:

- (1) Respite care providers for the number of hours or days of services authorized and used. The rate that is established for the services is negotiated between the respite care program of the local area agency on aging and the respite care service provider.
- (2) Medicaid-certified nursing homes and DDD-certified group homes providing respite services the Medicaid rate approved for that facility. Contracted nursing homes must not charge more than the Medicaid rate for any services covered from the date of eligibility, unless authorized by the department (see RCW 18.51.070). Participants must pay for services not included in the Medicaid rate.
- (3) Private nursing homes at their published daily rate.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1220, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1225 Are participants required to pay for the cost of their services?** (1) There is no charge to the participant whose income is at or below forty percent of the state median income, based on family size.

(2) If the participant's gross income is above forty percent of the state median income, he or she is required to pay for part or all of the cost of the respite care services. The department will determine what amount the participant must contribute based on the state median income and family size.

(3) If the participant's gross income is one hundred percent or more of the state median income, the participant must pay the full cost of services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1225, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1230 Are there waiting lists for respite services?** (1) The department must first consider requests for emergency respite care. An example of an emergency is when the caregiver becomes ill or injured to the extent that the caregiver's ability to care for the participant is impaired.

(2) In nonemergency situations, respite care is allocated based upon available respite funds at the local level. Respite care must be provided on a first-come, first-served basis. If sufficient funds are not available when respite care is requested, services are made available using waiting lists and department-approved priority categories, developed by the AAA, including caregiver vulnerability and health condition, availability of other support systems, and whether other family members need care.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1230, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1300 What rights do I have as a client of the department?** As a client of the department, you have a right to:

- (1) Be treated with dignity, respect and without discrimination;
- (2) Not be abused, neglected, financially exploited, abandoned;
- (3) Have your property treated with respect;
- (4) Not answer questions, turn down services, and not accept case management services you do not want to receive. However, it may not be possible for the department to offer some services if you do not give enough information;
- (5) Be told about all services you can receive and make choices about services you want or don't want;
- (6) Have information about you kept private within the limits of the laws and DSHS regulations;
- (7) Be told in writing of agency decisions and receive a copy of your care plan;
- (8) Make a complaint without fear of harm;
- (9) Not be forced to answer questions or do something you don't want to;
- (10) Talk with your social service worker's supervisor if you and your social service worker do not agree;
- (11) Request a fair hearing;
- (12) Have interpreter services provided to you free of charge if you cannot speak or understand English well;
- (13) Take part in and have your wishes included in planning your care;
- (14) Choose, fire, or change a qualified provider you want; and
- (15) Receive results of the background check for any individual provider you choose.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1300, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1305 What if I disagree with the result of the CARE assessment and/or other eligibility decisions made by the department?** You have a right to contest the result of your CARE assessment and/or other eligibility decisions made by the department. The department will notify you in writing of the right to contest a decision and provide you with information on how to request a hearing.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-106-1305, filed 5/17/05, effective 6/17/05.]

**WAC 388-106-1310 When I request a fair hearing on my CARE assessment and another CARE assessment(s) is done between my fair hearing request and the fair hearing, which CARE assessment must the administrative law judge review?** When you request a fair hearing on your CARE assessment and another CARE assessment(s) is done between your fair hearing request and the fair hearing, the administrative law judge must review the most recent CARE assessment.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-106-1310, filed 5/17/05, effective 6/17/05.]

## Chapter 388-112 WAC

### RESIDENTIAL LONG-TERM CARE SERVICES

#### WAC

388-112-0020	What content must be included in an orientation?
388-112-0060	Is competency testing required for basic training?
388-112-0090	Is competency testing required for modified basic training?
388-112-0210	What kinds of training topics are required for continuing education?
388-112-0245	Who is required to complete continuing education training, and when?
388-112-0255	What is first-aid training?
388-112-0260	What are the CPR and first-aid training requirements?
388-112-0315	How many times may a competency test be taken?

**WAC 388-112-0020 What content must be included in an orientation?** Orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:

- (1) The care setting;
- (2) The characteristics and special needs of the population served;
- (3) Fire and life safety, including:
  - (a) Emergency communication (including phone system if one exists);
  - (b) Evacuation planning (including fire alarms and fire extinguishers where they exist);
  - (c) Ways to handle resident injuries and falls or other accidents;
  - (d) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and
  - (e) The location of home policies and procedures.
- (4) Communication skills and information, including:
  - (a) Methods for supporting effective communication among the resident/guardian, staff, and family members;
  - (b) Use of verbal and nonverbal communication;
  - (c) Review of written communications and/or documentation required for the job, including the resident's service plan;
  - (d) Expectations about communication with other home staff; and
  - (e) Whom to contact about problems and concerns.
- (5) Universal precautions and infection control, including:

- (a) Proper hand washing techniques;
- (b) Protection from exposure to blood and other body fluids;
- (c) Appropriate disposal of contaminated/hazardous articles;

(d) Reporting exposure to contaminated articles, blood, or other body fluids; and

(e) What staff should do if they are ill.

(6) Resident rights, including:

(a) The resident's right to confidentiality of information about the resident;

(b) The resident's right to participate in making decisions about the resident's care, and to refuse care;

(c) Staff's duty to protect and promote the rights of each resident, and assist the resident to exercise his or her rights;

(d) How and to whom staff should report any concerns they may have about a resident's decision concerning the resident's care;

(e) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;

(f) Advocates that are available to help residents (LTC ombudsmen, organizations); and

(g) Complaint lines, hot lines, and resident grievance procedures.

(7) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0020, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-065, § 388-112-0020, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0060 Is competency testing required for basic training?** Passing the DSHS competency test is required for successful completion of basic training as provided under WAC 388-112-0290 through 388-112-0315.

For licensed adult family home providers and employees, successfully completing basic training includes passing the safe food handling section or obtaining a valid food handler permit.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0060, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-065, § 388-112-0060, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0090 Is competency testing required for modified basic training?** Passing the DSHS competency test is required for successful completion of modified basic training as provided in WAC 388-112-0290 through 388-112-0315.

For licensed adult family home providers and employees, successfully completing modified basic training includes passing the safe food handling section or obtaining a valid food handler permit.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0090, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-065, § 388-112-0090, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0210 What kinds of training topics are required for continuing education?** Continuing education must be on a topic relevant to the care setting and care needs of residents, including but not limited to:

- (1) Resident rights;

- (2) Personal care (such as transfers or skin care);
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive resident behavior support;
- (10) Developing or improving resident centered activities;
- (11) Dealing with wandering or aggressive resident behaviors;
- (12) Medical conditions; and
- (13) In adult family homes, safe food handling.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0210, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-066, § 388-112-0210, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0245 Who is required to complete continuing education training, and when? Adult family homes**

(1) Adult family home providers (including entity representatives as defined under chapter 388-76 WAC), resident managers, and caregivers must complete ten hours of continuing education each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training.

(2) Continuing education must be on a topic relevant to the care setting and care needs of residents in adult family homes.

(3) Continuing education must include 0.5 hours per year on safe food handling in adult family homes.

**Boarding homes**

(4) Boarding home administrators (or their designees) and caregivers must complete ten hours of continuing education each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training. A boarding home administrator with a current nursing home administrator license is exempt from this requirement.

(5) Continuing education must be on a topic relevant to the care setting and care needs of residents in boarding homes.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0245, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-066, § 388-112-0245, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0255 What is first-aid training?** First-aid training is training that meets the guidelines established by the Occupational Safety and Health Administration and listed at [www.osha.gov](http://www.osha.gov). Topics include:

- (1) General program elements, including:
  - (a) Responding to a health emergency;
  - (b) Surveying the scene;
  - (c) Basic cardiopulmonary resuscitation (CPR);
  - (d) Basic first aid intervention;
  - (e) Standard precautions;
  - (f) First aid supplies; and

- (g) Trainee assessments.
- (2) Type of injury training, including:
  - (a) Shock;
  - (b) Bleeding;
  - (c) Poisoning;
  - (d) Burns;
  - (e) Temperature extremes;
  - (f) Musculoskeletal injuries;
  - (g) Bites and stings;
  - (h) Confined spaces; and
  - (i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.
- (3) Site of injury training, including:
  - (a) Head and neck;
  - (b) Eye;
  - (c) Nose;
  - (d) Mouth and teeth;
  - (e) Chest;
  - (f) Abdomen; and
  - (g) Hand, finger and foot.
- (4) Successful completion of first aid training, following the OSHA guidelines, also serves as proof of the CPR training.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0255, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-066, § 388-112-0255, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0260 What are the CPR and first-aid training requirements? Adult family homes**

(1) Adult family home providers and resident managers must possess a valid CPR and first-aid card or certificate prior to providing care for residents, and must maintain valid cards or certificates.

(2) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of employment and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for residents.

(3) Adult family home caregivers must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for residents, if the provision of care for residents is directly supervised by a fully qualified caregiver who has a valid first-aid and CPR card or certificate; or

(b) Before providing care for residents, if the provision of care for residents is not directly supervised by a fully qualified caregiver who has a valid first-aid and CPR card or certificate.

**Boarding homes**

(4) Boarding home administrators who provide direct care, and caregivers must possess a valid CPR and first-aid card or certificate within thirty days of employment, and must maintain valid cards or certificates. Licensed nurses working in boarding homes must possess a valid CPR card or certificate within thirty days of employment, and must maintain a valid card or certificate.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0260, filed 12/15/05, effective 1/15/06. Statutory

Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-066, § 388-112-0260, filed 7/11/02, effective 8/11/02.]

**WAC 388-112-0315 How many times may a competency test be taken?** (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

[Statutory Authority: RCW 18.20.090, 70.128.040, 70.128.230, and 2005 c 505. 06-01-046, § 388-112-0315, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-066, § 388-112-0315, filed 7/11/02, effective 8/11/02.]

## Chapter 388-145 WAC EMERGENCY RESPITE CENTERS

### WAC

388-145-0100	What personal characteristics must a person have to provide care to children at a center?
388-145-0230	When is a license denied, suspended or revoked?

**WAC 388-145-0100 What personal characteristics must a person have to provide care to children at a center?** If a person is requesting a license or a position as an employee, volunteer, intern, or contractor in an emergency respite center, he/she must:

(1) Demonstrate an understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, and social needs of the children under his/her care.

(2) Be able to furnish the child with a nurturing, respectful, supportive, and responsive environment.

(3) Not have been disqualified by our background check (chapter 388-06 WAC) before having unsupervised access to children.

(4) Not have been found to have committed child abuse or neglect.

(5) Not have had a license denied or revoked from an agency that provides care to children or vulnerable adults, unless the department determines that the denial or revocation was not based on a factor that may pose a risk to the health, safety or welfare of children.

[Statutory Authority: RCW 74.15.030, 74.15.280. 05-11-008, § 388-145-0100, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0100, filed 3/26/03, effective 4/26/03.]

**WAC 388-145-0230 When is a license denied, suspended or revoked?** (1) An emergency respite center license must be denied, suspended or revoked if the department decides that you cannot provide care for children in a way that ensures their safety, health and well-being.

(2) The department must deny, suspend, or revoke your license for any of the reasons that follow:

(a) Your facility fails to meet the health and safety requirements to receive a certificate of compliance as required by the department of health and/or Washington state patrol fire protection bureau.

(b) You or anyone on the premises have been disqualified by your background check (see chapter 388-06 WAC).

(c) You or anyone on the premises have been found to have committed child abuse or neglect, or you treat, permit or assist in treating children in your care with cruelty, indifference, abuse, neglect, or exploitation, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(d) You or anyone on the premises had a license denied or revoked from an agency that provided care to children or vulnerable adults, unless the department determines that the denial or revocation was not based on a factor that may pose a risk to the health, safety or welfare of children.

(e) You try to get a license deceitfully, such as making false statements or leaving out important information on the application.

(f) You commit, permit or assist in an illegal act on the premises of an emergency respite center providing care to children.

(g) You are using illegal drugs, or excessively using alcohol and/or prescription drugs.

(h) You knowingly allowed employees or volunteers with false statements on their applications to work at your agency.

(i) You repeatedly lack qualified or an adequate number of staff to care for the number and types of children under your care.

(j) You have refused to allow our authorized staff and inspectors to have requested information or access to your facility, child and program files, and/or your staff and clients.

(k) You are unable to manage the property, fiscal responsibilities, or staff in your agency.

(l) You have failed to comply with the federal and state laws for any Native American children that you have under care.

[Statutory Authority: RCW 74.15.030, 74.15.280. 05-11-008, § 388-145-0230, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0230, filed 3/26/03, effective 4/26/03.]

## Chapter 388-160 WAC MINIMUM LICENSING REQUIREMENTS FOR OVERNIGHT YOUTH SHELTERS

### WAC

388-160-0075	What qualifications does a person need to care for youth at an overnight youth shelter?
388-160-0195	When must the department deny, suspend or revoke a license?

**WAC 388-160-0075 What qualifications does a person need to care for youth at an overnight youth shelter?** If a person is requesting a license or a position as an employee, intern, or a volunteer at an overnight youth shelter, he/she must not:

(1) Have a history of child abuse or neglect.

(2) Be disqualified by our background check (see chapter 388-06 WAC).

(3) Have had a license denied or revoked from an agency that provides care to children or vulnerable adults, unless the department determines that the denial or revocation was not based on a factor that may pose a risk to the health, safety or welfare of children.

(4) The department may require additional information from you, your staff, interns, or volunteers. We may request this information at any time and it may include, but is not limited to any of the following evaluations and/or documentation of completed treatment:

- (a) Substance and alcohol abuse evaluations;
- (b) Psychiatric evaluations;
- (c) Psycho-sexual evaluations; and
- (d) Medical evaluations or reports.

(5) Any evaluation or information requested by the department must be supplied at the expense of the applicant or licensee.

(6) The department must approve the evaluator providing the above services and you must give the licensor permission to speak with the evaluator before and after the evaluation.

[Statutory Authority: RCW 74.15.010, 74.15.030, 05-14-013, § 388-160-0075, filed 6/22/05, effective 7/23/05. Statutory Authority: Chapter 75.15 [74.15] RCW, 01-15-001, § 388-160-0075, filed 7/5/01, effective 8/5/01.]

**WAC 388-160-0195 When must the department deny, suspend or revoke a license?** (1) A license must be denied, suspended or revoked if the department decides that you cannot provide care for youth in a way that ensures their safety, health and well-being.

(2) The department must deny, suspend, or revoke you license for any of the reasons that follow.

(a) You have failed your background check (see chapter 388-06 WAC).

(b) You have been found to have committed child abuse or neglect or you treat, permit or assist in treating children in your care with cruelty, indifference, abuse, neglect, or exploitation.

(c) You or anyone on the premises had a license denied or revoked from an agency that provided care to children or vulnerable adults.

(d) You attempt to get a license by deceitful means, such as making false statements or leaving out important information on the application.

(e) You commit, permit or assist in an illegal act on the premises of a home or facility providing care to children.

(f) You are using illegal drugs, or excessively using alcohol and/or prescription drugs.

(g) You knowingly allowed employees or volunteers who made false statements on their applications to work at your agency.

(h) You repeatedly lack qualified or an adequate number of staff to care for the number and types of children under your care.

(i) You have refused to allow our authorized staff and inspectors to have requested information or access to your facility, child and program files, and/or your staff and clients.

(j) You are unable to manage the property, fiscal responsibilities, or staff in your agency.

[Statutory Authority: RCW 74.15.010, 74.15.030, 05-14-013, § 388-160-0195, filed 6/22/05, effective 7/23/05. Statutory Authority: Chapter 75.15 [74.15] RCW, 01-15-001, § 388-160-0195, filed 7/5/01, effective 8/5/01.]

## Chapter 388-273 WAC

### WASHINGTON TELEPHONE ASSISTANCE PROGRAM

(Formerly chapter 388-31 WAC)

#### WAC

388-273-0035 What we reimburse the local telephone company.

**WAC 388-273-0035 What we reimburse the local telephone company.** (1) Within available funding limits, we reimburse local telephone companies for fully documented administrative and program expenses associated with WTAP. The reimbursable expenses are limited to:

(a) Program services provided to eligible households June 1, 2003 and beyond, and after eligibility for WTAP is verified;

(i) Monthly flat rate service.

We reimburse the local telephone company an amount equal to the monthly flat rate of the incumbent local exchange carrier providing service in the customer's exchange area, minus the WTAP assistance rate set by the commission, and minus the amount of federal lifeline program reimbursement available to an eligible telecommunications carrier. An "incumbent local exchange carrier" is a telephone company in the U.S. that was providing local service when the Telecommunications Act of 1996 was enacted, and is required to file tariffs with the commission. For all exchange areas, the WTAP reimbursement shall be limited to not more than nineteen dollars for each eligible household.

(ii) Connection fee.

We reimburse the local telephone company an amount equal to one-half the connection fee rate or twenty-two dollars, whichever is less, for your first connection at a given address. If you move, we will reimburse the local telephone company for your first connection at the new address.

(iii) Waiver of local deposit.

We reimburse the local telephone company an amount up to two times the WTAP assistance rate.

(b) Correct, verifiable billing items;

(c) One monthly invoice and supporting documentation submitted and received by WTAP by the fifteenth day following the month the expense occurred;

(d) Items charged in error that have been corrected within thirty days from the date we return the report of invoicing error to the local phone company;

(e) Salaries and benefits for time required to implement and maintain WTAP, with the exception that time required for the correction of billing, case number and client identification errors is not an allowable expense;

(f) Travel expenses for attending hearings, meetings, or training pertaining to WTAP;

(g) Expenses for supplies and materials for implementing and maintaining WTAP;

(h) Postage and handling for delivery of WTAP material;

(i) Administrative charge for change of service orders specified by tariffs; and

(j) Preapproved documented indirect costs associated with implementing and maintaining WTAP.

[Statutory Authority: RCW 74.08.090, 80.36.440, 80.36.410 through 80.36.470. 05-15-152, § 388-273-0035, filed 7/19/05, effective 8/19/05. Statutory Authority: RCW 74.08.090, 80.36.440, 2003 c 134. 04-13-136, § 388-273-0035, filed 6/22/04, effective 7/23/04. Statutory Authority: RCW 74.08.090, 80.36.440. 01-09-023, § 388-273-0035, filed 4/9/01, effective 6/1/01.]

## Chapter 388-290 WAC

### WORKING CONNECTIONS CHILD CARE

#### WAC

388-290-0020	Are there special circumstances that might affect my WCCC eligibility?
388-290-0030	What must I do when I apply for or receive WCCC benefits?
388-290-0032	What are the consequences if I do not report changes within the specified time frames?
388-290-0035	What responsibilities does the WCCC program staff have?
388-290-0130	What in-home/relative providers can I choose under the WCCC program?
388-290-0135	When I choose an in-home/relative provider, what information must I give the department?
388-290-0138	What responsibilities does my eligible in-home/relative provider have?
388-290-0140	When is my in-home/relative provider not eligible for WCCC payment?
388-290-0155	What happens after the WCCC program receives the background information?
388-290-0180	When are the WCCC program subsidy rates in this chapter effective?
388-290-0190	What does the WCCC program pay for and when can the program pay more?
388-290-0200	What daily rates does DSHS pay for child care in a licensed or certified child care center or DSHS contracted seasonal day camps?
388-290-0205	What daily rates does DSHS pay for child care in a licensed or certified family home child care?
388-290-0240	What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid?
388-290-0260	Who has a right to ask for a hearing and how do they ask for one?
388-290-0271	When might I get an overpayment?
388-290-0273	When would my licensed or certified provider or DSHS contracted seasonal day camp get an overpayment?
388-290-0274	When would my in-home/relative provider get an overpayment?

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-290-0250	When can WCCC pay a bonus for enrolling an infant? [Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0250, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0250, filed 12/19/01, effective 1/19/02.] Repealed by 05-20-051, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3).
388-290-0255	When can the WCCC program establish a protective payee to pay my in-home/relative provider? [Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0255, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. 02-14-083, § 388-290-0255, filed 6/28/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0255, filed 12/19/01, effective 1/19/02.] Repealed by 05-22-078, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085.

**WAC 388-290-0020 Are there special circumstances that might affect my WCCC eligibility?** (1) You might be eligible for WCCC if you are:

(a) An employee of the same child care center where your children receive care and you do not provide direct care to your own children during the time WCCC is requested;

(b) In an activity needed to remove a WorkFirst sanction or, Child SafetyNet status;

(c) A parent in a two-parent family and one parent is not able or available to provide care for your children while the other is working, looking for work, or preparing for work;

(i) "Able" means physically and mentally capable of caring for a child in a responsible manner. If you claim one parent is unable to care for the children, you must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:

(A) Reason the parent is unable to care for the children;

(B) Expected duration and severity of the condition that keeps them from caring for the children; and

(C) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing they are cooperating with treatment and are still unable to care for the children.

(ii) "Available" means free to provide care when not participating in an approved work activity under WAC 388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055 during the time child care is needed.

(d) A married consumer described under WAC 388-290-0005 (1)(d) through (i). Only you or your spouse must be participating in activities under WAC 388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055.

(2) You might be eligible for WCCC if your children are legally residing in the country, are living in Washington state, and are:

(a) Less than age thirteen; or

(b) Less than age nineteen, and:

(i) Have a verified special need, according to WAC 388-290-0220; or

(ii) Are under court supervision.

(3) Any of your children who receive care at the same place where you work (other than (1)(a) of this subsection) are not eligible for WCCC payments but can be included in your household if they meet WAC 388-290-0015. This includes if you work:

(a) In a family home child care in any capacity and your children are receiving care at the same home during your hours of employment; or

(b) In your home or another location and your children receive care at the same location during your hours of employment.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0020, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0020, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0020, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0020, filed 12/19/01, effective 1/19/02.]



**WAC 388-290-0030 What must I do when I apply for or receive WCCC benefits?** When you apply for or receive WCCC benefits you must:

(1) Give us correct and current information so we can determine your eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 388-290-0125;

(3) Pay, or make a plan to have someone pay, your WCCC copayment directly to your child care provider;

(4) Leave your children with your provider while you are in WCCC approved activities. If you are not in an approved activity and you want to use the provider, you must make a plan to pay the provider yourself if the provider wants payment.

(5) If you use an in-home/relative provider, make sure care is being provided in the right home per WAC 388-290-0130.

(6) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. You become ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remain ineligible until you meet quality assurance requirements or thirty days from the determination of noncooperation.

(7) Cooperate with the fraud early detection (FRED) investigator. If you refuse to cooperate (provide the information requested) with the investigator, it could affect your benefits.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0030, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0030, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0030, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0032 What are the consequences if I do not report changes within the specified time frames?** If you fail to report any changes as required in WAC 388-290-0031 within the stated time frames, we may establish an overpayment per WAC 388-290-0271 or you might have to pay more than your normal share of child care costs, such as:

(1) Paying a higher copayment;

(2) Paying for extra hours of care when your activity requires more than ten hours a day of care;

(3) Receiving an overpayment for the number of days your child was absent including the absences the licensed/certified or DSHS seasonal contracted day care provider is allowed to bill (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DSHS 22-877). An overpayment for absent days can occur when care is used when you are not eligible for WCCC and can be up to five days a month;

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0032, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0032, filed 3/29/04 and 4/7/04, effective 5/28/04.]

**WAC 388-290-0035 What responsibilities does the WCCC program staff have?** The WCCC program staff are responsible to:

(1) Determine your eligibility within thirty days from the date you applied (application date as described in WAC 388-290-0100(2)).

(2) Allow you to choose your provider as long as they meet the requirements in WAC 388-290-0125;

(3) Review your chosen in-home/relative provider's background information.

(4) Authorize payments only to child care providers who allow you to see your children whenever they are in care;

(5) Only authorize payment when no adult in your WCCC family is "able or available" to care for your children (under WAC 388-290-0020).

(6) Inform you of:

(a) Your rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers we can pay;

(c) The community resources that can help you select child care when needed; and

(d) Any change in your copayment during the authorization period except under WAC 388-290-0120(5).

(7) Respond to you within ten days if you report a change of circumstance that affects your:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(8) Provide prompt child care payments to your child care provider.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0035, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0035, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0035, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0035, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0130 What in-home/relative providers can I choose under the WCCC program?** (1) To be eligible as an in-home/relative provider the person must:

(a) Be an adult who is a U.S. citizen or legally residing in the United States;

(b) Meet the requirements in WAC 388-290-0135; and

(c) Be one of the following adults providing care in the home of either the child or the adult:

(i) A sibling living outside the child's home;

(ii) An extended tribal family member according to chapter 74.15 RCW; or

(iii) A grandparent, aunt, uncle, or great-grandparent, great-aunt or great-uncle.

(2) An adult not listed in (1)(c)(i), (ii), or (iii) of this section must:

(a) Meet the requirements in subsection (1)(a) and (b) of this section; and

(b) Provide care in the child's home.

(3) If you use an in-home/relative provider you can:

(a) Have no more than two in-home/relative providers authorized for payment during your eligibility period at the same time (not including back-up providers);

(b) Have one back up provider (licensed or an in-home/relative provider).

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0130, filed 10/31/05, effective 12/1/05. Statutory Authority:

RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0130, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0130, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0130, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0135 When I choose an in-home/relative provider, what information must I give the department?** When you choose in-home/relative child care, you must complete certain forms and give us the following:

- (1) The in-home/relative child care provider's legal name, address and telephone number;
- (2) A copy of the provider's valid Social Security card;
- (3) A copy of the provider's photo identification;
- (4) A completed background check authorization; and
- (5) A form supplied by us, completed and signed by you and the provider in which both of you attest to the following:
  - (a) The provider is:
    - (i) Of suitable character and competence;
    - (ii) Of sufficient physical and mental health to meet the needs of the children in care. If we request it, you must provide written evidence that the in-home child care provider of your choice is of sufficient physical and mental health to be a safe child care provider;
    - (iii) Able to work with the children without using corporal punishment or psychological abuse;
    - (iv) Able to accept and follow instructions;
    - (v) Able to maintain personal cleanliness;
    - (vi) Prompt and regular in job attendance;
    - (vii) Informed about basic health practices, prevention and control of infectious disease, immunizations; and
    - (viii) Able to provide constant care, supervision and activities based on the child's developmental needs.
  - (b) The children are current on the immunization schedule as described in the National Immunization Guidelines, developed by the American Academy of Pediatrics and the Advisory Committee on Immunization Practices;
  - (c) The home where care is provided is safe for the care of the children.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0135, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0135, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0135, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0135, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0138 What responsibilities does my eligible in-home/relative provider have?** Your in-home/relative provider must:

- (1) Report within ten days changes in their legal name, address or telephone number;
- (2) Report within twenty-four hours pending charges or convictions they have;
- (3) Report within twenty-four hours pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home;
- (4) Bill WCCC only for care he/she provided;
- (5) Not bill WCCC for more than six children at one time for the same hours of care; and

- (6) Keep correct attendance records. Records must:
  - (a) Show both days and times the care was provided;
  - (b) Be kept for five years; and
  - (c) Be given to us, within fourteen consecutive calendar days, if we ask for them.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0138, filed 10/31/05, effective 12/1/05.]

**WAC 388-290-0140 When is my in-home/relative provider not eligible for WCCC payment?** We do not pay for the cost of in-home/relative care if:

- (1) Your provider does not meet the requirements in WAC 388-290-0130, 388-290-0135, and 388-290-0138;
- (2) Your in-home/relative provider has been convicted of, or has charges pending for crimes posted on the DSHS secretary's crime and action list for background checks for ESA. You can find the complete list at <http://www1.dshs.wa.gov/esa/dccel/policy.shtml>;
- (3) We do not have background check results according to WAC 388-290-0143;
- (4) The provider is:
  - (a) The child's biological, adoptive or step-parent;
  - (b) The child's nonneedy or needy relative or relative's spouse or live-in partner;
  - (c) The child's legal guardian or the guardian's spouse or live-in partner; or
  - (d) Another adult acting in loco parentis or that adult's spouse or live-in partner.
- (5) We do not have the results of all applicable criminal background checks under WAC 388-290-0143(1) and 388-290-0150. An in-home/relative provider is not an eligible provider (per WAC 388-290-0095 and 388-290-0100) prior to receiving these background results. Providers other than in-home/relative providers you can use are described in WAC 388-290-0125; or
- (6) We determine your provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. We will use criteria, such as the following, when reviewing information about incidents/issues/reports/findings:
  - (a) Recency;
  - (b) Seriousness;
  - (c) Type;
  - (d) Frequency; and
  - (e) Relationship to the direct care of a child including health, mental health, learning, and safety.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0140, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0140, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0140, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0155 What happens after the WCCC program receives the background information?** After we receive the background information we:

- (1) Compare the background information with convictions posted on the DSHS secretary's crime and action list for background checks for economic services administration

(ESA). You can find the complete list at <http://www1.dshs.wa.gov/esa/dccel/policy.shtml>.

(2) Review the background information using the following rules:

(a) We give the same weight to a pending charge for a crime as a conviction;

(b) If the conviction has been renamed, we give the same weight as the previous named conviction. For example, larceny is now called theft;

(c) We give convictions whose titles are preceded with the word "attempted" the same weight as those titles without the word "attempted"; and

(d) We do not consider the crime a conviction for the purposes of WCCC when:

(i) It has been pardoned; or

(ii) A court of law acts to expunge, dismiss, or vacate the conviction record.

(3) Notify you whether or not we are able to approve the provider for WCCC.

(4) Allow you, the consumer, to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet.

(5) Deny or stop payment when the background information disqualifies the individual being checked.

(6) Assist you in finding other child care arrangements.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0155, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0155, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-14-066, § 388-290-0155, filed 6/27/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0155, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0180 When are the WCCC program subsidy rates in this chapter effective?** DSHS child care subsidy rates in this chapter are effective on or after November 1, 2005.

[Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). 05-20-051, § 388-290-0180, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0180, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0180, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0190 What does the WCCC program pay for and when can the program pay more?** (1) We may pay for:

(a) Basic child care hours, either full-day, half-day or hourly. We authorize:

(i) Full-day child care to licensed or certified facilities and DSHS contracted seasonal day camps when your children need care for five or more hours per day;

(ii) Half-day child care to licensed or certified facilities and DSHS contracted seasonal day camps when your children need care for less than five hours per day; and

(iii) Hourly child care for in-home/relative child care.

(b) A registration fee (under WAC 388-290-0245);

(c) A field trip fee (under WAC 388-290-0245); and

(d) Special needs care when the child has a documented need for higher level of care (under WAC 388-290-0220, 388-290-0225, 388-290-0230, and 388-290-0235).

(2) If care is not available within a reasonable distance at our daily rate, then we authorize the provider's usual daily rate.

(3) If care is over ten hours per day, and the provider's policy is to charge for these extra hours, then we authorize an additional amount of care.

[Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). 05-20-051, § 388-290-0190, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0190, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0190, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0190, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0200 What daily rates does DSHS pay for child care in a licensed or certified child care center or DSHS contracted seasonal day camps?** (1) We pay the lesser of the following to a licensed or certified child care center or DSHS contracted seasonal day camp:

(a) The provider's usual daily rate for that child; or

(b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$25.89	\$21.77	\$20.57	\$19.36
	Half-Day	\$12.95	\$10.89	\$10.29	\$9.68
Spokane County	Full-Day	\$26.48	\$22.27	\$21.04	\$19.80
	Half-Day	\$13.25	\$11.14	\$10.53	\$9.90
Region 2	Full-Day	\$26.14	\$21.83	\$20.23	\$17.91
	Half-Day	\$13.07	\$10.92	\$10.12	\$8.96
Region 3	Full-Day	\$34.60	\$28.84	\$24.92	\$24.20
	Half-Day	\$17.30	\$14.42	\$12.46	\$12.10
Region 4	Full-Day	\$40.27	\$33.63	\$28.21	\$25.40
	Half-Day	\$20.14	\$16.82	\$14.11	\$12.70
Region 5	Full-Day	\$29.52	\$25.40	\$22.36	\$19.85
	Half-Day	\$14.76	\$12.70	\$11.18	\$9.93
Region 6	Full-Day	\$29.03	\$24.92	\$21.77	\$21.29
	Half-Day	\$14.52	\$12.46	\$10.89	\$10.65

(2) The child care center WAC 388-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC 388-290-0220.

(4) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.

[Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

opment Fund Rules). 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0205 What daily rates does DSHS pay for child care in a licensed or certified family home child care?** (1) We pay the lesser of the following to a licensed or certified family home child care:

- (a) The provider's usual daily rate for that child; or
- (b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$21.29	\$19.16	\$19.16	\$17.04
	Half-Day	\$10.65	\$9.58	\$9.58	\$8.52
Spokane County	Full-Day	\$21.78	\$19.60	\$19.60	\$17.43
	Half-Day	\$10.89	\$9.80	\$9.80	\$8.71
Region 2	Full-Day	\$21.29	\$20.23	\$18.10	\$18.10
	Half-Day	\$10.65	\$10.12	\$9.05	\$9.05
Region 3	Full-Day	\$30.88	\$26.62	\$23.42	\$21.29
	Half-Day	\$15.44	\$13.31	\$11.71	\$10.65
Region 4	Full-Day	\$31.94	\$31.59	\$26.62	\$25.55
	Half-Day	\$15.97	\$15.80	\$13.31	\$12.78
Region 5	Full-Day	\$23.42	\$21.29	\$20.23	\$18.10
	Half-Day	\$11.71	\$10.65	\$10.12	\$9.05
Region 6	Full-Day	\$23.42	\$21.29	\$21.29	\$20.23
	Half-Day	\$11.71	\$10.65	\$10.65	\$10.12

(2) The family home child care WAC 388-296-0020 and 388-296-1350 allows providers to care for children from birth up to and including the day before their twelfth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license. If the provider has a waiver to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) and the five to eleven year age range column is used for comparison.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC 388-290-0220.

(4) We pay family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five to eleven year age range column for comparisons.

(5) We cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's nonneedy or needy relative or that relative's spouse or live-in partner;
- (c) The child's legal guardian or the guardian's spouse or live-in partner; or
- (d) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(6) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.

[Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). 05-20-051, § 388-290-0205, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0205, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085.

02-12-069, § 388-290-0205, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0205, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0240 What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid?** (1) When you employ an in-home/relative provider, the maximum we pay for child care is the lesser of the following:

(a) Two dollars and six cents per hour for the child who needs the greatest number of hours of care and one dollar and three cents per hour for the care of each additional child in the family; or

(b) The provider's usual hourly rate for that care.

(2) We may pay above the maximum hourly rate for children who have special needs under WAC 388-290-0235.

(3) We make the WCCC payment directly to your eligible provider.

(4) When appropriate, we pay your (the employer's) share of the following:

(a) Social Security and Medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA) when applicable.

(5) If an in-home/relative child care provider receives less than the wage base limit per family in a calendar year, we refund all withheld taxes to the provider.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0240, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.13.085. 02-12-069, § 388-290-0240, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0240, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0260 Who has a right to ask for a hearing and how do they ask for one?** (1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.

(2) Licensed or certified child care providers or in-home/relative providers can request hearings under chapter 388-02 WAC and RCW 43.20B.675 only for WCCC overpayments.

(3) To request a hearing you, the licensed/certified provider, or in-home/relative provider:

(a) Contacts the office which sent them the notice; or

(b) Writes to the Office of Administrative Hearings, PO Box 42489, Olympia WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers (per RCW 43.20B.675).

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0260, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0260, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). 02-01-135, § 388-290-0260, filed 12/19/01, effective 1/19/02.]

**WAC 388-290-0271 When might I get an overpayment?** You get WCCC overpayments whether you are a current or past WCCC consumer, when we make payment for WCCC benefits and:

(1) You are no longer eligible or you are eligible for a smaller amount of care, such as using care for an unapproved activity or for children not in your WCCC household;

(2) You fail to report information to us that results in an error in our determination of:

- (a) Your eligibility;
- (b) The amount of care authorized; or
- (c) The amount of your copayment.

(3) Your provider is not an eligible provider per WAC 388-290-0140;

(4) Your child is not eligible per WAC 388-290-0015 or 388-290-0020.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0271, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0271, filed 3/29/04 and 4/7/04, effective 5/28/04.]

**WAC 388-290-0273 When would my licensed or certified provider or DSHS contracted seasonal day camp get an overpayment?** (1) We establish WCCC overpayments for your licensed or certified child care provider and DSHS contracted seasonal day camps, when your provider:

(a) Billed and received payment for WCCC services not provided;

(b) Does not have attendance records that comply with licensing requirements (refer to WAC 388-295-7030, 388-296-0520, and 388-151-460 for attendance record requirements). Only attendance records meeting WAC requirements will be accepted for attendance verification;

(c) Billed and received payment for more than they are eligible to bill;

(d) Billed and received payment and the provider is not eligible based on WAC 388-290-0125; or

(e) Is caring for a child outside their licensed allowable age range without a waiver.

(2) The WCCC program staff may request documentation from your provider when preparing to establish an overpayment. Your provider has fourteen consecutive calendar days to supply any requested documentation.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0273, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. 04-08-021 and 04-08-134, § 388-290-0273, filed 3/29/04 and 4/7/04, effective 5/28/04.]

**WAC 388-290-0274 When would my in-home/relative provider get an overpayment?** (1) We establish WCCC overpayments for your in-home/relative provider when your provider:

(a) Billed and received payment for WCCC services not provided;

(b) Does not have attendance records that comply with attendance records based on WAC 388-290-0138. Only attendance records meeting WAC requirements will be accepted for attendance verification;

(c) Billed and received payment for more than they are eligible to bill;

(2) The WCCC program staff may request documentation from your provider when preparing to establish an over-

payment. Your provider has fourteen consecutive calendar days to supply any requested documentation.

[Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. 05-22-078, § 388-290-0274, filed 10/31/05, effective 12/1/05.]

## Chapter 388-310 WAC WORKFIRST

### WAC

388-310-0600  
388-310-1400

WorkFirst—Job search.  
WorkFirst—Community service.

### WAC 388-310-0600 WorkFirst—Job search. (1) What is job search?

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

- (a) Classroom instruction; and/or
- (b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers; and/or
- (c) Preemployment training; and/or
- (d) High-wage/high-demand training.

#### (2) What is preemployment training?

Preemployment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Preemployment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete preemployment training.

(b) You can find out about current preemployment training opportunities by asking your job service specialist, your case manager or staff at your local community and technical college.

#### (3) What is high-wage/high-demand training?

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage high-demand criteria; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy). There is no work requirement with either option for the twelve months of training time.

(c) To qualify for HWHD training, you must also:

- (i) Meet all of the prerequisites for the course;
- (ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with colocated ESD staff during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

**(4) Who provides me with job search?**

You get job search from the employment security department or another organization under contract with WorkFirst to provide these services.

**(5) How long do I stay in job search?**

Periods of job search may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:

(a) You find a full-time job; or

(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or

(c) Your situation changes and the case manager changes the activities on your IRP to fit your new circumstances (see WAC 388-310-0400); or

(d) After fully participating in job search, and based on your experience in looking for work in the local labor market, it is determined that you need additional skills and/or experience to find a job; or

(e) You have not found a job at the end of the job search period.

**(6) What happens at the end of job search if I have not found a job?**

At the end of each job search period, you will be referred back to your case manager who will conduct a new employability evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 05-16-107, § 388-310-0600, filed 8/2/05, effective 9/2/05. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. 02-15-067, § 388-310-0600, filed 7/11/02, effective 8/1/02. Statutory Authority: RCW 74.08.090, 74.04.050. 02-04-058, § 388-310-0600, filed 1/30/02, effective 3/2/02. Statutory Authority: RCW 74.08A.340(2), 45 C.F.R. 260.31, RCW 74.08.090, and chapter 74.04 RCW. 00-16-055, § 388-310-0600, filed 7/26/00, effective 8/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. 99-10-027, § 388-310-0600, filed 4/28/99, effective 5/29/99; 97-20-129, § 388-310-0600, filed 10/1/97, effective 11/1/97.]

**WAC 388-310-1400 WorkFirst—Community service. (1) What is community service?**

Community service includes two types of activities for mandatory participants:

(a) Unpaid work (such as the work performed by volunteer workers) that you perform for a charitable nonprofit organization, federal, state, local or tribal government or district; or

(b) An activity approved by your case manager which benefits you, your family, your community or your tribe. These activities may include traditional activities that perpetuate tribal culture and customs.

**(2) What type of community service[s] activities benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?**

The following types of community service activities benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:

(a) Caring for a disabled family member;

(b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);

(c) Providing childcare for another WorkFirst participant who is doing community service;

(d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;

(e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law);

(f) Participating in the pregnancy to employment pathway; and/or

(g) Job preparation.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 05-13-030, § 388-310-1400, filed 6/3/05, effective 7/4/05. Statutory Authority: RCW 74.08.090, 74.04.050. 00-06-062, § 388-310-1400, filed 3/1/00, effective 3/1/00; 99-10-027, § 388-310-1400, filed 4/28/99, effective 5/29/99; 97-20-129, § 388-310-1400, filed 10/1/97, effective 11/1/97.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**Chapter 388-400 WAC  
PROGRAM SUMMARY**

**WAC**

388-400-0005	Who is eligible for temporary assistance for needy families?
388-400-0010	Who is eligible for state family assistance?

**WAC 388-400-0005 Who is eligible for temporary assistance for needy families?** (1) You can get temporary assistance for needy families (TANF), if you:

(a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC;

and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

(i) Prove who is the father of children applying for or getting TANF or SFA; and

(ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a six-month report and provide proof of any changes as required under WAC 388-418-0011.

(2) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(3) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

(4) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005.

(5) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

[(6) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.]

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-14-100, § 388-400-0005, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 2004 c 54, 04-23-027, § 388-400-0005, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 04-15-057, § 388-400-0005, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.04.050, 74.04.057, 2000 2nd sp.s. c 1, 01-03-121, § 388-400-0005, filed 1/22/01, effective 3/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510, 00-05-007, § 388-400-0005, filed 2/4/00, effective 3/6/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090, 98-16-044, § 388-400-0005, filed 7/31/98, effective 9/1/98.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffective changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 388-400-0010 Who is eligible for state family assistance?** (1) To be eligible for state family assistance (SFA), aliens must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are a alien who is permanently residing in the United States under color of law (PRUCOL) as defined in WAC 388-424-0001;

(c) You are a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005; or

(e) You are a pregnant woman who has been convicted of misrepresenting their residence in order to receive benefits from two or more states at the same time.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090 and 21 U.S.C. 862a (d)(1)(A), 05-21-100, § 388-400-0010, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 04-15-057, § 388-400-0010, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510, 00-05-007, § 388-400-0010, filed 2/4/00, effective 3/6/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090, 98-16-044, § 388-400-0010, filed 7/31/98, effective 9/1/98.]

## Chapter 388-406 WAC APPLICATIONS

### WAC

388-406-0015  
388-406-0055

Can I get Basic Food right away?  
When do my benefits start?

**WAC 388-406-0015 Can I get Basic Food right away?** (1) When the department gets your Basic Food application, we look at your circumstances at the time you applied to see if you can get benefits within five calendar days. This is called "expedited service."

(2) To get expedited service, you must provide proof of who you are and meet one of the following conditions:

(a) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, of under one hundred fifty dollars **and** have available cash of one hundred dollars or less; or

(b) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, **plus** available cash of less than your total shelter costs (rent or mortgage and the utility allowance you are eligible for under WAC 388-450-0195); or

(c) Be a destitute migrant or seasonal farm worker household, under WAC 388-406-0021, **and** your household's available cash is one hundred dollars or less.

(3) If you are eligible for expedited service and are not required to have an office interview under WAC 388-452-0005, you can have a telephone interview and still get benefits within five days.

(4) If you are applying for Basic Food, "day one" of your five-day expedited service period starts on the:

(a) Day after the date you filed your application;

(b) Date you are released from a public institution; or

(c) Date of your interview if you:

(i) Waived your expedited interview and we decide you are eligible for expedited service during your rescheduled interview; or

(ii) Were screened as ineligible for expedited service and we later determine you are eligible for the service during your interview.

(5) If you get expedited service, we only require verification of your identity to provide your first benefit issuance within five days. Other required verifications may be postponed.

(6) All postponed verification must be provided for your ongoing eligibility to be determined and any additional benefits to issue. If you applied:

(a) On or before the 15th of the month, we issue one month's benefits and you have up to thirty days from the date of application to give us any postponed verification; or

(b) On or after the 16th of the month, we issue two months' benefits and you have until the end of the second month to give us any postponed verification.

(7) If we can determine ongoing eligibility at your interview and do not need to postpone any required verifications, we will assign you a regular certification period as described in WAC 388-416-0005.

(8) If you have received expedited service in the past, you can get this service again if you meet the requirements listed in subsection (2) above and you:

(a) Gave us all the information we needed to determine ongoing eligibility for your last expedited service benefit period; or

(b) Were certified under normal processing standards after your last expedited certification.

(9) If you reapply for benefits:

(a) Before your certification period ends, you are not eligible for expedited service;

(b) After your certification period ends, your five-day expedited service period is the same as a new application;

(c) While you receive transitional food assistance as described in chapter 388-489 WAC, you are not eligible for expedited service.

(10) If you are denied expedited service, you can ask for a department review of our decision. We review the decision within two working days.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-22-075, § 388-406-0015, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 03-22-061, § 388-406-0015, filed 11/3/03, effective 12/4/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 20 C.F.R. 416.2130. 02-20-068, § 388-406-0015, filed 9/30/02, effective 10/31/02. Statutory Authority: RCW 74.04.510 and 74.08.090. 01-18-036, § 388-406-0015, filed 8/28/01, effective 10/1/01. Statutory Authority: RCW 74.04.510 and Section 11 (e)(9) of the Food Stamp Act. 00-06-015, § 388-406-0015, filed 2/22/00, effective 4/1/00. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-406-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0015, filed 7/31/98, effective 9/1/98.]

**WAC 388-406-0055 When do my benefits start?** The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) Cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day for TANF, SFA, or RCA; or

(c) No later than the forty-fifth day for general assistance (GAU).

(2) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the first day of the month following the month you applied for benefits. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date you applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible for Basic Food, the date we approve Basic Food is the date your AU became CE.

(e) You are approved for transitional food assistance under chapter 388-489 WAC. We determine the date transitional benefits start as described under WAC 388-489-0015.

(f) You receive transitional food assistance with people you used to live with, and are now approved to receive Basic Food in a different assistance unit:

(i) We must give the other assistance unit ten days notice as described under WAC 388-458-0025 before we remove you from the transitional food assistance benefits.

(ii) Your Basic Food benefits start the first of the month after we remove you from the transitional benefits. For example, if we remove you from transitional benefits on November 30th, you are eligible for Basic Food on December 1st.

(3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-406-0055, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0055, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-14-023, § 388-406-0055, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0055, filed 7/31/98, effective 9/1/98.]



## Chapter 388-408 WAC

### ASSISTANCE UNITS

#### WAC

388-408-0035 Who is in my assistance unit for Basic Food?

**WAC 388-408-0035 Who is in my assistance unit for Basic Food?** (1) For Basic Food, a person must be in your assistance unit (AU) if they live in the same home as you and:

- (a) Regularly buy food or prepare meals with you; or
- (b) You provide meals for them and they pay less than a reasonable amount for meals.

(2) If the following people live with you, they must be in your AU even if you do not usually buy or prepare food together:

- (a) Your spouse;
- (b) Your parents if you are under age twenty-two (even if you are married);
- (c) Your children under age twenty-two;
- (d) The parent of a child who must be in your AU;
- (e) A child under age eighteen who doesn't live with their parent unless the child:
  - (i) Is emancipated;
  - (ii) Gets a TANF grant in their own name; or
  - (iii) Is not financially dependent on an adult in the AU because they get and have control of income of at least the TANF payment standard under WAC 388-478-0020(2) before taxes or other withholdings.

(3) If any of the people in subsections (1) or (2) already receive transitional food assistance under chapter 388-489 WAC, you can only receive benefits if they choose to reapply for Basic Food as described in WAC 388-489-0020.

(4) If you live in an institution where you may be eligible for Basic Food under WAC 388-408-0040, we decide who is in your AU as follows:

- (a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your AU under subsection (2) of this rule; or
- (b) If you apply for benefits on your own, we include you, anyone who must be in your AU under subsection (2) of this rule, and other residents you choose to apply with.

(5) Anyone who must be in your AU under subsection (1) or (2) is an ineligible AU member if they:

- (a) Are disqualified for an intentional program violation (IPV) under WAC 388-446-0015;
- (b) Do not meet ABAWD work requirements under WAC 388-444-0030.

(c) Do not meet work requirements under WAC 388-444-0055;

(d) Do not provide a Social Security number under WAC 388-476-0005;

(e) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

(f) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

(6) If your AU has an ineligible member:

(a) We count the ineligible member's income as part of your AU's income under WAC 388-450-0140;

(b) We count all the ineligible members resources to your AU; and

(c) We do not use the ineligible member to determine your AU's size for the maximum income amount or allotment under WAC 388-478-0060.

(7) If the following people live in the same home as you, you can choose if we include them in your AU:

(a) A permanently disabled person who is age sixty or over and cannot make their own meals if the total income of everyone else in the home (not counting the elderly and disabled person's spouse) is not more than the one hundred sixty-five percent standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your AU, the boarder cannot get Basic Food benefits in a separate AU;

(c) A person placed in your home for foster care. If you do not include this person in your AU, they cannot get Basic Food benefits in a separate AU;

(d) Roomers; or

(e) Live-in attendants even if they buy or prepare food with you.

(8) If someone in your AU moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your AU, unless you receive transitional food assistance.

(9) For transitional food assistance, your TFA AU includes the people who were in your Basic Food AU for the last month you received:

(a) Temporary assistance for needy families;

(b) State family assistance; or

(c) Tribal TANF benefits.

(10) If someone received Basic Food or food stamps in another AU or another state, they cannot receive benefits in your AU for the same period of time with one exception. If you already received Basic Food, food stamp, or transitional food assistance benefits:

(a) In another state, you are not eligible for Basic Food for the period of time covered by the benefits you received from the other state; or

(b) In another AU, you are not eligible for Basic Food in a different AU for the same period of time;

(c) In another AU, but you left the AU to live in a shelter for battered women and children under WAC 388-408-0045, you may be eligible to receive benefits in a separate AU.

(11) The following people who live in your home are not members of your AU. If they are eligible for Basic Food, they may be a separate AU:

(a) Someone who usually buys and prepares food separately from your AU if they are not required to be in your AU; or

(b) Someone who lives in a separate residence.

(12) A student who is ineligible for Basic Food under WAC 388-482-0005 is not a member of your AU.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-19-061, § 388-408-0035, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-14-040, § 388-408-0035, filed 6/29/04, effective 7/30/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-06-025, § 388-408-0035, filed 2/23/04, effective 4/1/04; 03-19-118, § 388-408-0035, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-060, § 388-408-0035, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-408-0035, filed 7/31/98, effective 9/1/98.]

## Chapter 388-410 WAC

### BENEFIT ERROR

#### WAC

388-410-0001 What is a cash/medical assistance overpayment?

**WAC 388-410-0001 What is a cash/medical assistance overpayment?** (1) An overpayment is any cash or medical assistance paid that is more than the assistance unit was eligible to receive.

(2) There are two types of cash/medical overpayments:

(a) Intentional overpayments, presumed to exist if you willfully or knowingly:

(i) Fail to report a change you must tell us about under WAC 388-418-0005 within the time frames under WAC 388-418-0007; or

(ii) Misstate or fail to reveal a fact affecting eligibility as specified in WAC 388-446-0001.

(b) Unintentional overpayments, which includes all other client-caused and all department-caused overpayments.

(3) If you request a fair hearing and the fair hearing decision is in favor of the department, then:

(a) Some or all of the continued assistance you get before the fair hearing decision must be paid back to the department (see WAC 388-418-0020); and

(b) The amount of assistance you must pay back will be limited to sixty days of assistance, starting with the day after the department receives your hearing request.

(4) If you receive child support payments directly from the noncustodial parent, you must turn these payments over to the division of child support (DCS). These payments are not cash assistance overpayments.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 05-08-124, § 388-410-0001, filed 4/5/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 04-05-010, § 388-410-0001, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). 99-24-131, § 388-410-0001, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-410-0001, filed 7/31/98, effective 9/1/98.]

## Chapter 388-412 WAC

### BENEFIT ISSUANCES

#### WAC

388-412-0025 How do I get my benefits?

**WAC 388-412-0025 How do I get my benefits?** (1) Your cash benefits are sent to you by either:

(a) Electronic benefit transfer (EBT) card, which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;

(b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;

(c) A check to a payee who is not approved for direct deposit; or

(d) A check to you if you get:

(i) Diversion cash assistance (DCA) that cannot be paid directly to a vendor;

(ii) Additional requirements for emergent needs (AREN) that cannot be paid directly to a vendor;

(iii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor;

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(iv) Clothing and personal incidentals (CPI) payments; or

(v) State supplemental payment (SSP) and you do not receive your benefit through EFT.

(2) You use a Quest debit card to access your benefits in your EBT account. You get a personal identification number (PIN) that you must enter when using this card.

(3) Your Basic Food benefits are deposited into your EBT account on the day of the month defined in WAC 388-412-0020.

(4) We establish an EBT account for each AU that receives their benefits by EBT.

(5) We cancel your cash and Basic Food benefits when you do not use your EBT account for three hundred sixty-five days.

(a) Basic Food benefits that were canceled because you did not use them for three hundred sixty-five days cannot be replaced.

(b) Cash benefits that were canceled because you did not use them for three hundred sixty-five days may be replaced. You have two years to contact the department of revenue in order to replace your cash benefits. You can contact department of revenue at 1-888-328-9271. After that time, you must contact the state treasurer to claim any canceled funds.

(6) You must use your cash and Basic Food benefits from your EBT account. We do not convert cash or Basic Food benefits to checks.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-17-089, § 388-412-0025, filed 8/12/05, effective 9/12/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-412-0025, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. 02-18-105, § 388-412-0025, filed 9/3/02, effective 10/4/02; 01-18-054, § 388-412-0025, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-412-0025, filed 7/31/98, effective 9/1/98.]

## Chapter 388-414 WAC

### CATEGORICAL ELIGIBILITY FOR FOOD ASSISTANCE

#### WAC

388-414-0001 Do I have to meet all eligibility requirements for Basic Food?

**WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food?** (1) What is "categorically eligible" (CE)?

(a) Being **categorically eligible (CE)** means that you have already met requirements for the program. If you are CE, you do not have to meet every program requirement to be eligible for Basic Food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for Basic Food:

(i) Residency under WAC 388-468-0005;

(ii) Countable resource limit under WAC 388-470-0005;

(iii) Maximum gross monthly income under WAC 388-478-0060; and

(iv) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for Basic Food:

(i) Social Security number information under WAC 388-476-0005; and

(ii) Sponsored alien information under WAC 388-450-0155.

(d) Being CE does not mean that your AU is guaranteed to get Basic Food benefits. If your AU is CE:

(i) You must still meet the other Basic Food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

**(2) Who is categorically eligible for Basic Food?**

Your Basic Food AU is CE when:

(a) **Every member** of your AU gets either general assistance (GA), Alcohol and Drug Abuse Treatment Support Act (ADATSA), or Supplemental Security Income (SSI) cash benefits on their own behalf;

(b) Any member of your AU gets or is authorized to get payments from the following programs because we have determined that the entire AU benefits from someone receiving the assistance:

(i) Temporary assistance for needy families (TANF) cash assistance;

(ii) State family assistance (SFA); or

(iii) Diversion cash assistance (DCA). You are CE for the month you receive DCA and the three following months as long as you have one adult relative caretaker with a dependent child in the Basic Food AU.

(c) Your AU's income that we don't exclude under WAC 388-450-0015 is not over the maximum gross monthly income under WAC 388-478-0060. If your income is not over the gross monthly income limit, we provide your AU information about department programs and referral to resources in the community.

**(3) Who is not CE even if my AU meets the above criteria?**

(a) Even if your AU is CE, members of your AU are not eligible for Basic Food if they:

(i) Are not eligible because of their alien or student status;

(ii) Were disqualified from Basic Food under WAC 388-444-0055 for failing work requirements;

(iii) Are not eligible for failing to provide or apply for a Social Security number;

(iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or

(v) Live in an institution not eligible for Basic Food under WAC 388-408-0040.

(b) If a person in your AU is not eligible for Basic Food, we do not include them as an **eligible member** of your CE AU.

(c) Your AU is not CE if:

(i) Your AU is not eligible because of striker requirements under WAC 388-480-0001;

(ii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;

(iii) Your AU refused to cooperate in providing information that is needed to determine your eligibility;

(iv) The head of household for your AU failed to meet work requirements; or

(v) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-23-081, § 388-414-0001, filed 11/15/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 24. 04-14-038, § 388-414-0001, filed 6/29/04, effective 8/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-07-139, § 388-414-0001, filed 3/22/04, effective 5/1/04. Statutory Authority: RCW 74.08.090, 74.04.510. 01-07-054, § 388-414-0001, filed 3/16/01, effective 3/29/01; 00-11-035, § 388-414-0001, filed 5/10/00, effective 8/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-414-0001, filed 7/31/98, effective 9/1/98.]

**Chapter 388-416 WAC  
CERTIFICATION PERIODS**

**WAC**

388-416-0005

388-416-0015

How long can I get Basic Food?

Certification periods for categorically needy (CN) medical and state children's health insurance program (SCHIP).

**WAC 388-416-0005 How long can I get Basic Food?**

(1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department may certify your AU for up to:

(a) **Six months** if your AU:

(i) Includes an able-bodied adult without dependents (ABAWD) who receives Basic Food in your AU and your AU does not live in an exempt area as described in WAC 388-444-0030;

(ii) Includes a person who receives ADATSA benefits as described in chapter 388-800 WAC;

(iii) Is considered homeless under WAC 388-408-0050; or

(iv) Includes a migrant or seasonal farmworker as described under WAC 388-406-0021.

(b) **Twenty-four months** if all adults in your AU are elderly persons or individuals with disabilities and no one in your AU has earned income.

(c) **Twelve months** if your AU does not meet any of the conditions for six or twenty-four months.

(2) If you receive transitional food assistance, we set your certification period as described under WAC 388-489-0015.

(3) If your AU is homeless **or** includes an ABAWD when you live in a nonexempt area, we may shorten your certification period.

(4) We terminate your Basic Food benefits when:

(a) We get proof of a change that makes your AU ineligible; or

(b) We get information that your AU is ineligible; and

(c) You do not provide needed information to verify your AU's circumstances.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-416-0005, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 05-08-124, § 388-416-0005, filed 4/5/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-19-134, § 388-416-0005, filed 9/21/04, effective 10/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057,

74.04.510. 03-22-039, § 388-416-0005, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-11-107, § 388-416-0005, filed 5/21/01, effective 7/1/01; 99-16-024, § 388-416-0005, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-416-0005, filed 7/31/98, effective 9/1/98.]

**WAC 388-416-0015 Certification periods for categorically needy (CN) medical and state children's health insurance program (SCHIP).** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state or death. When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

(6) For an SSI-related person the certification period is twelve months.

(7) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

- (a) The child is receiving inpatient services on the last day of the month the child turns nineteen;
- (b) The inpatient stay continues into the following month or months; and
- (c) The child remains eligible except for exceeding age nineteen.

(8) A retroactive certification period can begin up to three months immediately before the month of application when:

- (a) The client would have been eligible for medical assistance if the client had applied; and
- (b) The client received covered medical services as described in WAC 388-529-0100.

(9) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

(10) Any months of a retroactive certification period are added to the designated certification periods described in this section.

(11) For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:

(a) The certification periods are described in subsections (1), (5), and (7) of this section;

(b) There is not a retroactive eligibility period as described in subsections (8), (9), and (10); and

(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:

- (i) All other SCHIP eligibility factors are met; and
- (ii) An eligibility decision is made per WAC 388-406-0035.

[Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

## Chapter 388-418 WAC CHANGE OF CIRCUMSTANCE

### WAC

388-418-0005	How will I know what changes I must report?
388-418-0007	When do I have to report changes in my circumstances?
388-418-0011	What is a six-month report, and do I have to complete one in order to keep getting benefits?
388-418-0020	How does the department determine the date a change affects my benefits?
388-418-0025	Effect of changes on medical program eligibility.

**WAC 388-418-0005 How will I know what changes I must report?** You must report changes to the department based on the kinds of assistance you receive. The set of changes you must report for people in your assistance unit under chapter 388-408 WAC is based on the benefits you receive that require you to report the most changes. It is the first program that you receive benefits from in the list below.

For example:

If you receive long term care and Basic Food benefits, you tell us about changes based on the long term care requirements because it is the first program in the list below you receive benefits from.

(1) If you receive long term care benefits such as Basic, Basic Plus, chore, community protection, COPES, nursing home, Hospice, or medically needy waiver, you must tell us if you have a change of:

- (a) Address;
- (b) Marital status;
- (c) Living arrangement;
- (d) Income;
- (e) Resources;
- (f) Medical expenses; and

(g) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

(2) If you receive medical benefits based on age, blindness, or disability (SSI-related medical), or ADATSA benefits, you need to tell us if:

- (a) You move;
- (b) A family member moves into or out of your home;

(c) Your resources change; or  
 (d) Your income changes. This includes the income of you, your spouse or your child living with you.

(3) If you receive Basic Food and all adults in your assistance unit are elderly persons or individuals with disabilities and have no earned income, you need to tell us if:

- (a) You move;
  - (b) You start getting money from a new source;
  - (c) Your income changes by more than fifty dollars;
  - (d) Your liquid resources, such as your cash on hand or bank accounts, are more than two thousand dollars; or
  - (e) Someone moves into or out of your home.
- (4) If you receive cash benefits, you need to tell us if:

- (a) You move;
- (b) Someone moves out of your home;
- (c) Your total gross monthly income goes over the:
- (i) Payment standard under WAC 388-478-0030 if you receive general assistance; or

(ii) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(d) You have liquid resources more than four thousand dollars; or

- (e) You have a change in employment. Tell us if you:
  - (i) Get a job or change employers;
  - (ii) Change from part-time to full-time or full-time to part-time;
  - (iii) Have a change in your hourly wage rate or salary; or
  - (iv) Stop working.

(5) If you receive family medical benefits, you need to tell us if:

- (a) You move;
- (b) A family member moves out of your home; or
- (c) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.

(6) If you receive Basic Food benefits, you need to tell us if:

- (a) You move;
- (b) Your total gross monthly income is more than the gross monthly income limit under WAC 388-478-0060; or
- (c) Anyone who receives food benefits in your assistance unit must meet work requirements under WAC 388-444-0030 and their hours at work go below twenty hours per week.

(7) If you receive children's medical benefits, you need to tell us if:

- (a) You move; or
  - (b) A family member moves out of the house.
- (8) If you receive pregnancy medical benefits, you need to tell us if:

- (a) You move; or
  - (b) You are no longer pregnant.
- (9) If you receive other medical benefits, you need to tell us if:

- (a) You move; or
  - (b) A family member moves out of the home.
- (10) If you receive transitional food assistance, you do not have to report any changes in your circumstances.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-418-0005, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055,

74.04.057, 74.08.090, 44.04.280. 05-09-021, § 388-418-0005, filed 4/12/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-21-026, § 388-418-0005, filed 10/13/04, effective 11/13/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-06-026, § 388-418-0005, filed 2/23/04, effective 3/25/04; 03-21-028, § 388-418-0005, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-11-109, § 388-418-0005, filed 5/21/01, effective 7/1/01; 99-23-034, § 388-418-0005, filed 11/10/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-418-0005, filed 7/31/98, effective 9/1/98.]

**WAC 388-418-0007 When do I have to report changes in my circumstances?** (1) If your household has a change of circumstances you are **not required to report** under WAC 388-418-0005, you do not need to contact the department about this change. If you tell us about this change, we take action based on the new information. This includes:

(a) Requesting additional information we need to determine your eligibility and benefits under WAC 388-490-0005;

(b) Increasing your benefits when we have proof of a change that makes you eligible for more benefits; or

(c) Reducing or terminating your benefits based on the change.

(2) If you **are applying for** benefits and have had a change:

(a) After the date you applied but before your interview, you must report the change at the time of your interview; or

(b) After you have been interviewed, you must report changes required to be reported by someone receiving benefits as described under WAC 388-418-0005. You must report this change by the tenth day of the month following the month the change happened.

(3) If you **receive** cash assistance, medical, or Basic Food, you must report changes required under WAC 388-418-0005 by the tenth day of the month following the month the change happened.

(4) For a change in income, the date a change happened is the date you receive income based on this change. For example, the date of your first paycheck for a new job, or the date of a paycheck showing a change in your wage or salary.

(5) If we require you to complete a six-month report, you must complete the report to inform us of your circumstances as described under WAC 388-418-0011 in order to keep getting benefits.

(6) If you get TANF/SFA, and you learn that a child in your assistance unit (AU) will be gone from your home longer than ninety days, you must report this information to us within five calendar days from the date you learn this information. If you do not report this within five days, the child's caretaker is not eligible for cash benefits for one month. We continue to budget the ineligible person's countable income as described in WAC 388-450-0162 while determining the benefits for the remaining people in the AU.

(7) If you report changes late, you may get the wrong amount or wrong type of benefits. If you get more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. 05-11-074, § 388-418-0007, filed 5/17/05, effective 7/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-19-134, § 388-418-0007, filed 9/21/04, effective 10/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-028, § 388-418-0007, filed 10/7/03, effective 11/1/03. Statutory Authority:

RCW 74.08.090 and 74.04.510, 01-11-109, § 388-418-0007, filed 5/21/01, effective 7/1/01.]

**WAC 388-418-0011 What is a six-month report, and do I have to complete one in order to keep getting benefits?** (1) A six-month report is a form the department sends you to confirm your current circumstances. We use the information you provide us through this report to determine if you are still eligible for benefits and calculate your monthly benefits.

(2) If you receive benefits from any of the following programs, you must complete a six-month report:

(a) Cash assistance unless you receive **only** refugee cash assistance as described under WAC 388-400-0030;

(b) Family-related medical; or

(c) Basic Food unless you meet one of the following conditions:

(i) Your assistance unit has a certification period of six months or less. If you have a certification period of six months or less, you must complete a recertification under WAC 388-434-0010 in order to keep getting Basic Food benefits; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

(3) If you must complete a six-month report, we send you the report with the most current information we have on your case. You can choose to complete the report in one of the following ways:

(a) **Complete and return the form to the department.** For us to consider your six-month report complete, you must take all of the steps below:

(i) Complete the report form, telling us about changes in your circumstances we ask about;

(ii) Sign and date the report;

(iii) Provide proof of any changes you report;

(iv) If you receive family medical benefits, provide proof of your income even if it has not changed; and

(v) Mail or turn in the completed form and any required proof to us by the due date on the report. This is the tenth day of the sixth month of your review or certification period.

(b) **Complete the six-month report over the phone.** For us to consider your six-month report complete, you must take all of the steps below:

(i) Contact us at the phone number we provide on the report form, telling us about changes in your circumstances we ask about;

(ii) Provide proof of any changes you report. We may be able to verify some information over the phone;

(iii) If you receive family medical benefits, provide proof of your income even if it has not changed; and

(iv) Mail or turn in any required proof to us by the due date on the report. This is the tenth day of the sixth month of your review or certification period.

(4) If your benefits change because of the information in your six-month report, the change takes effect in the seventh month of your certification or review period even if this does not provide you ten days notice before we change your benefits.

(5) If you do not complete your required six-month report, your benefits end at the end of the sixth month of your review or certification period.

(6) Late reports. If you complete the report after the end of the sixth month of your certification or review period, we process the report as described below based on when we receive the report:

(a) Reports completed by the last day of the month after the month the report was due: We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the report.

(b) Reports completed after the last day of the month after the month the report was due: We treat this report as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-09-020, § 388-418-0011, filed 4/12/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54, 04-19-134, § 388-418-0011, filed 9/21/04, effective 10/1/04.]

**WAC 388-418-0020 How does the department determine the date a change affects my benefits?** (1) Unless otherwise specified, the rules in this chapter refer to cash, medical assistance, and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If we learn about a change in your circumstances from another person, agency, or by matching with any number of systems, we determine the impact this change has on your benefits. We may request additional information under WAC 388-490-0005 or update your benefits based on this information.

(4) For programs other than pregnancy medical and children's medical, if you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change. Changes in income during a certification period do not affect pregnancy medical or children's medical assistance.

(5) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the additional benefits within ten days of the day we got the proof.

(6) When a change causes a decrease in benefits, we reduce your benefit amount without asking for proof.

(a) If you report a change within the time limits in WAC 388-418-0007, and you are not reporting this as part of a six-month report, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report a change you must tell us about under WAC 388-418-0005, or you report a change later than we require under WAC 388-418-0007, we determine your eligibility as if you had reported this on time. If you received more benefits than you should, we set up an overpayment as described under chapter 388-410 WAC.

(7) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(8) Within ten days of the day we learn about a change, we send advance notice according to the rules in chapter 388-458 WAC and take necessary action to provide you the correct benefits. If you request a hearing about a proposed decrease in benefits before the effective date or within the notice period as described in WAC 388-458-0040, we wait to take action on the change.

(9) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(10) When you request a hearing and get continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing; or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(11) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

(d) When institutional medical assistance participation changes, we calculate the new participation amount begin-

ning with the month your income or allowable expense changes.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-09-020, § 388-418-0020, filed 4/12/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54, 04-19-134, § 388-418-0020, filed 9/21/04, effective 10/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 03-21-028, § 388-418-0020, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090, 74.04.057, and 74.04.510, 02-14-086, § 388-418-0020, filed 6/28/02, effective 7/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510, 99-23-034, § 388-418-0020, filed 11/10/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090, 98-16-044, § 388-418-0020, filed 7/31/98, effective 9/1/98.]

### **WAC 388-418-0025 Effect of changes on medical program eligibility.**

(1) You continue to be eligible for Medicaid until the department determines your ineligibility or eligibility for another medical program. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

(a) A CN Medicaid program; or

(b) Any of the following cash grants:

(i) TANF;

(ii) SSI; or

(iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

(a) Earned income; or

(b) Collection of child or spousal support.

(4) A change in income during a certification period does affect eligibility for all medical programs except:

(a) Pregnant women's medical programs;

(b) Children's medical for newborns (F05);

(c) Children's medical benefits (F06);

(d) Children's health program (F08); or

(e) The first six months of the medical extension benefits.

(5) For a child receiving benefits under SCHIP as described in chapter 388-542 WAC, the department must redetermine eligibility for a Medicaid program when the family reports:

(a) Family income has decreased to less than two hundred percent federal poverty level (FPL);

(b) The child becomes pregnant;

(c) A change in family size; or

(d) The child receives SSI.

[Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415, 05-23-013, § 388-418-0025, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10, 04-03-019, § 388-418-0025, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415, 02-17-030, § 388-418-0025, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450, 00-08-002, § 388-418-0025, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.057 and Section 4731 of the BBA (Public Law 105-33), 99-10-064, § 388-418-0025, filed 5/3/99, effective 6/3/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090, 98-16-044, § 388-418-0025, filed 7/31/98, effective 9/1/98. Formerly WAC 388-508-0840, 388-509-0920, 388-509-0960, 388-522-2205 and 388-522-2210.]

## Chapter 388-424 WAC

### CITIZENSHIP/ALIEN STATUS

#### WAC

388-424-0006	Citizenship and alien status—Date of entry.
388-424-0010	Citizenship and alien status—Eligibility restrictions for the temporary assistance for needy families program and medical benefits, including nonemergency Medicaid and the state children's health insurance program (SCHIP).

#### WAC 388-424-0006 Citizenship and alien status—

**Date of entry.** (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on TANF, nonemergency Medicaid, and SCHIP.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar on TANF, nonemergency Medicaid, and SCHIP unless exempt. The five-year bar starts on the date that "qualified" status is obtained.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Conditional entrants;
- (d) Cuban/Haitian entrants;
- (e) Persons granted withholding of deportation or removal;
- (f) Refugees;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR);
- (h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-16-055, § 388-424-0006, filed 7/28/05, effective 8/28/05; 04-15-004, § 388-424-0006, filed 7/7/04, effective 8/7/04.]

**WAC 388-424-0010 Citizenship and alien status—Eligibility restrictions for the temporary assistance for needy families program and medical benefits, including nonemergency Medicaid and the state children's health insurance program (SCHIP).** (1) To receive TANF or medical benefits you must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking; or
- (f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, nonemergency Medicaid, and SCHIP benefits.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, non-emergency Medicaid, or SCHIP for five years after obtaining status as a qualified alien unless he or she is an alien as described under WAC 388-424-0006(4).

(4) An alien who is ineligible for TANF, nonemergency Medicaid, or SCHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien emergency medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (SFA, GA and ADATSA) and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) Children's health program as described in WAC 388-505-0210.

[Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. 05-23-013, § 388-424-0010, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 04-15-004, § 388-424-0010, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-424-0010, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and Public Law 106-395. 02-03-008, § 388-424-0010, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 74.08.090 and 74.08A.100. 99-17-023, § 388-424-0010, filed 8/10/99, effective 9/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-424-0010, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0520 and 388-518-1805.]

## Chapter 388-437 WAC

### EMERGENCY ASSISTANCE FOR FOOD STAMPS

#### WAC

388-437-0001	Disaster food stamp program.
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#### WAC 388-437-0001 Disaster food stamp program.

(1) In the event of a disaster, the department works with the United States Department of Agriculture, Food and Nutrition Services (FNS) to change some requirements for the Washington Basic Food program and help ensure that people in a disaster area have access to food. This is known as the disaster food stamp program.

(2) If the President of the United States has declared a portion of the state as a federal disaster area, we ask FNS to allow use of the disaster food stamp program for the areas impacted by the disaster. Both of the following conditions must be met:

(a) People's normal access to buy food has been disrupted; and

(b) These commercial channels have since been restored with reasonable access and sufficient food supplies as determined by FNS.

(3) The department will implement any disaster food stamp program as approved by FNS.



[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-23-028, § 388-437-0001, filed 11/8/05, effective 12/9/05; 98-16-044, § 388-437-0001, filed 7/31/98, effective 9/1/98.]

## Chapter 388-442 WAC FELONS

### WAC

388-442-0010 How does being a fleeing felon impact my eligibility for benefits?

**WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?** (1) You are a **fleeing felon** if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

(2) If you are a fleeing felon, or violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, you are not eligible for TANF/SFA, GA, or Basic Food benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090 and 21 U.S.C. 862a (d)(1)(A). 05-21-100, § 388-442-0010, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-18-002, § 388-442-0010, filed 8/19/04, effective 9/19/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510. 00-05-007, § 388-442-0010, filed 2/4/00, effective 3/6/00. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-442-0010, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-442-0010, filed 7/31/98, effective 9/1/98.]

## Chapter 388-446 WAC FRAUD

### WAC

388-446-0015 Intentional program violation (IPV) and disqualification hearings for Basic Food.

**WAC 388-446-0015 Intentional program violation (IPV) and disqualification hearings for Basic Food.** (1) An intentional program violation (IPV) is defined as an act in which a person intentionally:

- (a) Makes a false or misleading statement;
- (b) Misrepresents, conceals or withholds facts; or
- (c) Acts in violation of the Food Stamp Act, the Food Stamp Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food benefits.

(2) Basic Food clients suspected of committing an IPV are subject to referral for an administrative disqualification hearing, if:

- (a) The suspected IPV causes an over issuance of four hundred fifty dollars or more; or
- (b) The suspected IPV is due to the trafficking of food benefits; and
- (c) The person has not been referred for criminal proceedings; and
- (d) The person resides in Washington state, at the time of the referral; or
- (e) The person resides outside Washington state, but is within one hour's reasonable drive to a CSO.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV.

ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A client who commits one or more IPV's and is suspected of committing another, is referred for an ADH when the act of suspected violation occurred:

(a) After the department mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(5) A person suspected of IPV is entitled to receive notice of an ADH at least thirty days in advance of the hearing date. The notice is sent by certified mail, or provided to the client by personal service and will contain the following:

- (a) The date, time, and place of the hearing;
- (b) The charges against the individual;
- (c) A summary of the evidence, and how and where the evidence can be examined;
- (d) A warning that a decision will be based solely on evidence provided by the department, if the individual fails to appear at the hearing;

(e) A statement that the individual has ten days from the date of the scheduled hearing to show good cause for failure to appear at the hearing and to request rescheduling;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if a telephone hearing is scheduled, the individual can request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(6) The person or a representative shall have the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(7) The hearing will be conducted and a decision rendered even if the person or representative fail to appear, unless within ten days from the date of the scheduled hearing:

- (a) The person can show good cause for failing to appear; and
- (b) The person or representative requests the hearing be re-instated.

(8) A scheduled telephone hearing may be changed to an in-person hearing if requested one week or more in advance. If requested less than one week in advance the person must show good cause for the requested change.

(9) The ALJ issues a final decision as specified in WAC 388-02-0215(5) and WAC 388-02-0527. The decision determines whether the department establishes with clear and convincing evidence that the person committed and intended to commit an IPV.

(10) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(11) A client's disqualification is not implemented and benefits continue at the current amount when:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

(12) An administrative disqualification hearing and a regular hearing can be combined when the cause for both hearings is related.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 9.91.142. 05-23-082, § 388-446-0015, filed 11/15/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-446-0015, filed 7/31/98, effective 9/1/98.]

## Chapter 388-450 WAC

### INCOME

#### WAC

388-450-0015	What types of income are not used when figuring out my benefits?
388-450-0185	Does the department count all of my income to determine my eligibility and benefits for Basic Food?
388-450-0190	How does the department figure my shelter cost income deduction for Basic Food?
388-450-0195	Utility allowances for Basic Food programs.
388-450-0200	Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food?
388-450-0210	Countable income for medical programs.
388-450-0215	How does the department estimate my assistance unit's income to determine my eligibility and benefits?

**WAC 388-450-0015 What types of income are not used when figuring out my benefits?** This section applies to cash assistance, children's, family, or pregnancy medical, and Basic Food benefits.

(1) There are some types of income that we (the department) do not count when figuring out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0025, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Title IV-E and state foster care maintenance payments if the foster child is not included in your assistance unit;

(d) Energy assistance payments;

(e) Educational assistance as specified in WAC 388-450-0035;

(f) Native American benefits and payments as specified in WAC 388-450-0040;

(g) Income from employment and training programs as specified in WAC 388-450-0045;

(h) Money withheld from a client's benefit to repay an overpayment from the same income source. For Basic Food, this exclusion does not apply when the money is withheld to recover an intentional noncompliance overpayment from a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(i) Legally obligated child support payments received by TANF/SFA recipients;

(j) Payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(k) Payments specifically excluded from being counted as income under state or federal law. Disregard certain pay-

ments made by the Veterans Administration to children of Vietnam veterans (P.L. 106-419, see FR 67147§3.815);

(l) For cash and Basic Food: payments made to a third party on behalf of the household using funds that are not owed to the household; and

(m) For medical assistance: only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and Public Law 106-419. 05-03-078, § 388-450-0015, filed 1/17/05, effective 2/17/05. Statutory Authority: RCW 74.08.090 and 74.04.-510. 02-14-022, § 388-450-0015, filed 6/21/02, effective 6/22/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and 2000 2nd sp.s. c 1 § 210(12). 01-18-006, § 388-450-0015, filed 8/22/01, effective 9/22/01. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-17-025, § 388-450-0015, filed 8/10/99, effective 10/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0590.]

**WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food?** We subtract the following amounts from your assistance unit's (AU's) countable income before we determine your Basic Food benefit amount:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$134
2	\$134
3	\$134
4	\$134
5	\$157
6 or more	\$179

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside of your AU:

(i) Up to two hundred dollars for each dependent under age two; and

(ii) Up to one hundred seventy-five dollars for each dependent age two or older.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

(a) For a person who is not in your AU; or

(b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

**WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?** The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred dollars.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. 04-23-025, § 388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-

059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

**WAC 388-450-0195 Utility allowances for Basic Food programs.** (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$ 299
2	\$ 308
3	\$ 317
4	\$ 326
5	\$ 335
6 or more	\$ 344

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred thirty-six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of thirty-eight dollars.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.040.510 [74.04.510]. 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 CFR 273.9 (d)(6). 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

**WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food?** (1) If your Basic Food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses,

and certain expenses allowable for Medicare prescription drug card holders. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

- (a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;
- (b) Prescribed alternative therapy such as massage or acupuncture;
- (c) Prescription drugs;
- (d) Over the counter drugs;
- (e) Eye glasses;
- (f) Medical supplies other than special diets;
- (g) Medical equipment or medically needed changes to your home;
- (h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;
- (i) Long distance calls to a medical provider;
- (j) Hospital and outpatient treatment including:
  - (i) Nursing care; or
  - (ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.
- (k) Health insurance premiums paid by the person including:
  - (i) Medicare premiums; and
  - (ii) Insurance deductibles and co-payments.
- (l) Out-of-pocket expenses used to meet a spenddown as defined in WAC 388-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;
- (m) Dentures, hearing aids, and prosthetics;
- (n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;
- (o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and
- (p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

- (a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:
  - (i) Allow the one-time expense as a deduction when it is billed or due;
  - (ii) Average the expense through the remainder of your certification period; or
  - (iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of

your certification period, or average it for the remainder of your certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) If the elderly person or individual with a disability in your AU has a Medicare prescription drug card:

(a) Allow any out-of-pocket expenses that meet the criteria in subsections (2) and (3) above;

(b) Add a standard twenty-three dollars to these expenses; and

(c) Allow an additional fifty dollar monthly deduction to account for the 2004 and 2005 prescription subsidies:

(i) For twenty-four consecutive months if the client applied before January 2005; or

(ii) For the average number of months resulting from dividing the total subsidy amount by fifty dollars if the client applies in January 2005 or later.

(d) Allow the deductions in (b) and (c) of this subsection even if the AU has no out-of-pocket expenses.

(5) AU members with a Medicare prescription drug card have the option of using their verified pre-card out-of-pocket expenses when this amount is greater than using the standards in subsection (4).

(6) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by medical insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, United States Food and Nutrition Service Administrative Notices 04-39 and 04-45, and 2004 c 175. 05-05-025, § 388-450-0200, filed 2/8/05, effective 3/11/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-02-025, § 388-450-0200, filed 12/30/03, effective 2/1/04. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-23-083, § 388-450-0200, filed 11/16/99, effective 1/1/00; 99-16-024, § 388-450-0200, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0200, filed 7/31/98, effective 9/1/98.]

**WAC 388-450-0210 Countable income for medical programs.** (1) For purposes of medical program eligibility, a client's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program, have been applied.

(2) A client's countable income cannot exceed the income standard for the specific medical programs described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-

478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395 unless the program allows for those limits to be exceeded.

(3) Unless modified by subsection (4) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's medical program as described in WAC 388-505-0210;

(e) Children's health program as described in WAC 388-505-0210; and

(f) Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c), (d) and (e) of this section. The only work related income deductions for these programs are:

(i) Ninety dollars; and

(ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and

(iii) Child support as described in (c) of this subsection.

(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for the programs described in subsections (3)(c), (d), and (e), the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) A nonrecurring lump sum payment is considered as income in the month the client receives payment, and a resource if the client retains the payment after the month of receipt;

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. 05-23-013, § 388-450-0210, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-450-0210, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.08A.100, and Title XIX State Plan amendment 00-008. 02-03-009, § 388-450-0210, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0210, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0580, 388-505-0590 and 388-519-1910.]

**WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?** The department uses prospective budgeting to determine if your assistance unit (AU) is eligible and to calculate your benefits.

(1) We determine if your AU is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's income and expenses for that month. This is known as prospective budgeting.

(2) We base this estimate on what can be reasonably expected based on your current, past and future circumstances.

(3) We determine if our estimate is reasonable by looking at documents, statements, and other verification.

(4) We use two methods to estimate your AU's income:

(a) **Anticipating monthly income:** We estimate the actual amount of income you expect to receive in the month; and

(b) **Averaging income:** We estimate your income based on adding the total income you expect to receive for a period of time and dividing by the number of months in the time period.

(5) When we use the anticipating monthly method, we estimate the actual amount of income your AU expects to receive in the month. Your benefits will vary based on the income that is expected for that month.

(6) In general, you can choose which method we use to estimate your income. However, we **must** use the anticipating monthly method:

(a) For the month you apply for benefits, any income your AU receives in that month. If we do not have to use the anticipating monthly method for any other reason, we may average this income source for the remaining months of your certification period.

(b) For all your AU's income in the following circumstances:

(i) If you receive SSI-related medical benefits under chapter 388-475 WAC; or

(ii) If you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021, we must use the anticipating monthly method for the month your AU applied for benefits.

(c) For the income of any member of your AU who has income allocated to someone receiving SSI-related medical benefits under chapter 388-475 WAC;

(d) For the following sources of income to your AU:

(i) SSI; or

(ii) Social Security benefits.

(7) When we use the averaging method, we take the expected changes in your AU's income into consideration so your benefits do not change as much:

(a) If you receive your income weekly or every other week, we convert this income to a monthly amount. If you are paid:

(i) Weekly, we multiply your expected pay by 4.3; or

(ii) Every other week, we multiply your expected pay by 2.15.

(b) In most cases if you receive your income other than weekly or every other week, we estimate your expected income over the certification period by:

(i) Adding the total income in a representative time period;

(ii) Dividing by the number of pay periods in the time frame; and

(iii) Determining the monthly average from this amount.

(c) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(8) If you report a change in your AU's income, and we expect the change to last for at least a month beyond the month you reported the change, we recalculate your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we do not make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-16-109, § 388-450-0215, filed 8/2/05, effective 10/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-06-052, § 388-450-0215, filed 3/1/04, effective 4/1/04; 03-21-029, § 388-450-0215, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-23-083, § 388-450-0215, filed 11/16/99, effective 1/1/00; 99-16-024, § 388-450-0215, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0215, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0590.]

## Chapter 388-450A WAC INCOME—GARNISHMENT

### WAC

388-450A-0010 Can my subsidized income be garnished?

**WAC 388-450A-0010 Can my subsidized income be garnished?** (1) Your subsidized income cannot be garnished. Subsidized income is income that is partly or entirely paid from temporary assistance for needy families (TANF) funds. Examples of subsidized income are community jobs and WorkFirst work study.

(2) For how your subsidized income affects your benefits, see WAC 388-450-0035 or 388-450-0050.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.280. 05-13-029, § 388-450A-0010, filed 6/3/05, effective 7/4/05.]

## Chapter 388-462 WAC PREGNANCY

### WAC

388-462-0015 Medical eligibility for pregnant women.

**WAC 388-462-0015 Medical eligibility for pregnant women.** Eligibility requirements for pregnancy medical are described below.

(1) A pregnant woman is eligible for categorically needy (CN) scope of care if she meets the following requirements:

(a) Citizenship or immigration status (chapter 388-424 WAC); and

(b) Social Security account number (chapter 388-474 WAC); and

(c) Is a Washington state resident (chapter 388-468 WAC); and

(d) Has countable income as described in WAC 388-478-0075.

(2) A pregnant woman is considered for medically needy (MN) scope of care if she meets the requirements in subsection (1)(a) through (c) of this section and:

(a) Has countable income that exceeds the standard in subsection (1)(d) of this section; and

(b) Has countable resources that do not exceed the standard in WAC 388-478-0070.

(3) A pregnant woman may be eligible for noncitizen pregnancy medical if she is not eligible for medical described in subsections (1) and (2) of this section due to citizenship, immigrant status, or social security number requirements.

(4) A pregnant woman meeting the eligibility criteria in subsection (3) is eligible for:

(a) CN scope of care when the countable income is at or below the income standard described in subsection (1)(d); or

(b) MN scope of care when:

(i) The countable income exceeds the standard in subsection (1)(d); and

(ii) The resources do not exceed the standard described in WAC 388-478-0070.

(5) Consider as income to the pregnant woman the amount that is actually contributed to her by the father of her unborn child when the pregnant woman is not married to the father.

(6) The assignment of child support and medical support rights as described in chapter 388-422 WAC do not apply to pregnant women.

(7) A woman who was eligible for and received medical coverage on the last day of pregnancy is eligible for extended medical benefits for postpartum care for a minimum of sixty

days from the end of her pregnancy. This extension continues through the end of the month in which the sixtieth day falls.

(8) A woman who was eligible for medical coverage on the last day of pregnancy is eligible for family planning services for twelve months from the end of the pregnancy even when eligibility for pregnancy was determined after the pregnancy ended.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2), 05-07-032, § 388-462-0015, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415, 02-17-030, § 388-462-0015, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090, 98-16-044, § 388-462-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-508-0820, 388-508-0830, 388-522-2230 and 388-508-0835.]

## Chapter 388-473 WAC ONGOING ADDITIONAL REQUIREMENTS

### WAC

388-473-0010	What are ongoing additional requirements and how do I qualify?
388-473-0020	When do we authorize meals as an ongoing additional requirement?

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-473-0030	Home-delivered meals as an ongoing additional requirement. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 00-15-053, § 388-473-0030, filed 7/17/00, effective 9/1/00.] Repealed by 05-19-059, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.
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**WAC 388-473-0010 What are ongoing additional requirements and how do I qualify?** "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

- (a) Temporary assistance for needy families (TANF), or tribal TANF;
- (b) State family assistance (SFA);
- (c) Refugee cash;
- (d) General assistance cash; or
- (e) Supplemental Security Income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash or medical assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

- (a) The circumstances that create the need; and
- (b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months

GA	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change
All	Any time need or circumstances are expected to change.

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-19-059, § 388-473-0010, filed 9/16/05, effective 10/17/05; 01-01-070, § 388-473-0010, filed 12/12/00, effective 2/1/01; 00-15-053, § 388-473-0010, filed 7/17/00, effective 9/1/00.]

**WAC 388-473-0020 When do we authorize meals as an ongoing additional requirement?** (1) We authorize additional requirement benefits for meals when we decide all of the following conditions are true:

- (a) You meet the criteria in WAC 388-473-0020;
- (b) You are physically or mentally impaired in your ability to prepare meals; and
- (c) Getting help with meals would meet your nutrition or health needs and is not available to you through another federal or state source; such as the community options program entry system (COPES), Medicaid personal care (MPC), or informal support, such as a relative or volunteer.

(2) When we decide to provide meals as an additional requirement, we choose whether to authorize this benefit as restaurant meals or home-delivered meals.

(3) We authorize restaurant meals when:

- (a) You are unable to prepare some of your meals;
- (b) You have some physical ability to leave your home; and
- (c) Home-delivered meals are not available or would be more expensive.

(4) We authorize home-delivered meals when:

- (a) You are unable to prepare any of your meals;
- (b) You are physically limited in your ability to leave your home; and
- (c) Home-delivered meals are available.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-19-059, § 388-473-0020, filed 9/16/05, effective 10/17/05; 00-15-053, § 388-473-0020, filed 7/17/00, effective 9/1/00.]

## Chapter 388-474 WAC SUPPLEMENTAL SECURITY INCOME

### WAC

388-474-0012	What is a state supplemental payment and who can get it?
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**WAC 388-474-0012 What is a state supplemental payment and who can get it?** (1) The state supplemental payment (SSP) is a state-funded cash assistance program for certain clients who the Social Security Administration determines are eligible for Supplemental Security Income (SSI).

(2) You can get an SSP if:

- (a) You are a grandfathered SSI recipient under WAC 388-474-0001;
- (b) You are an individual with an ineligible spouse under WAC 388-474-0001;

(c) You receive SSI because you are age sixty-five or older under WAC 388-474-0001;

(d) You receive SSI because you are blind under WAC 388-474-0001;

(e) You are determined eligible for SSP by the division of developmental disabilities; or

(f) You are eligible for and receive SSI as a foster child receiving specific services through children's administration behavior rehabilitation services (BRS) for part or all of a month, and not eligible for foster care reimbursement under Title IV-E of the Social Security Act.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 05-07-031, § 388-474-0012, filed 3/9/05, effective 4/9/05; 03-21-125, § 388-474-0012, filed 10/20/03, effective 11/1/03; 03-03-114, § 388-474-0012, filed 1/21/03, effective 2/23/03.]

### Chapter 388-478 WAC STANDARDS FOR PAYMENTS

#### WAC

388-478-0015	Need standards for cash assistance.
388-478-0055	How much do I get from my state supplemental payments (SSP)?
388-478-0060	What are the income limits and maximum benefit amounts for Basic Food?
388-478-0065	Income and resource standards for family medical programs.
388-478-0070	Monthly income and countable resource standards for medically needy (MN).
388-478-0075	Medical programs—Monthly income standards based on the federal poverty level (FPL).
388-478-0080	Supplemental Security Income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards.
388-478-0085	Medicare savings programs—Monthly income and countable resources standards.

**WAC 388-478-0015 Need standards for cash assistance.** The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	\$ 989
2	1,251
3	1,545
4	1,823
5	2,101
6	2,379
7	2,749
8	3,043
9	3,336
10 or more	3,360

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	\$ 528
2	668
3	825
4	973
5	1,122
6	1,270
7	1,468
8	1,625
9	1,782
10 or more	1,939

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. 05-22-077 and 05-23-012, § 388-478-0015, filed 10/31/05 and 11/4/05, effective 1/1/06; 05-01-074, § 388-478-0015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 74.04.770, 74.04.050, 74.04.-055, 74.04.057. 03-24-059, § 388-478-0015, filed 12/1/03, effective 1/1/04; 03-23-116, § 388-478-0015, filed 11/18/03, effective 12/19/03. Statutory Authority: RCW 74.08.090, 74.04.510, and 74.04.770. 02-23-029, § 388-478-0015, filed 11/12/02, effective 12/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200. 01-11-108, § 388-478-0015, filed 5/21/01, effective 7/1/01. Statutory Authority: RCW 74.04.200. 99-04-056, § 388-478-0015, filed 1/29/99, effective 3/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0015, filed 7/31/98, effective 9/1/98.]

**WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?** (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older) - Calendar Year 2005	\$46.00
Individual (blind as determined by SSA) - Calendar Year 2005	\$46.00
Individual with an ineligible spouse - Calendar Year 2005	\$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.

Medical institution	Monthly SSP Rate
Individual	\$21.62

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090. 06-01-045, § 388-478-0055, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 04-07-024, § 388-478-0055, filed 3/8/04, effective 4/8/04; 03-03-114, § 388-478-0055, filed 1/21/03, effective 2/23/03. Statutory Authority: RCW 74.08.090, 74.04.057. 01-19-024, § 388-478-0055, filed 9/12/01, effective 11/1/01; 01-08-015, § 388-478-0055, filed 3/23/01, effective 5/1/01. Statutory Authority: RCW 74.08.-090. 00-20-054, § 388-478-0055, filed 9/29/00, effective 11/1/00. Statutory Authority: RCW 74.08.090 and 74.04.057. 00-11-130, § 388-478-0055, filed 5/22/00, effective 7/1/00; 99-18-063, § 388-478-0055, filed 8/30/99, effective 10/1/99. Statutory Authority: RCW 74.08.090 and 74.04.630. 99-04-103, § 388-478-0055, filed 2/3/99, effective 3/6/99. Statutory Authority:



RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0055, filed 7/31/98, effective 9/1/98. Formerly WAC 388-511-1115.]

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?** If your assistance unit (AU) meets all other eligibility requirements for

Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

## EFFECTIVE 10-1-05

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$1037	\$798	\$152	\$1316
2	1390	1070	278	1765
3	1744	1341	399	2213
4	2097	1613	506	2661
5	2450	1885	601	3109
6	2803	2156	722	3558
7	3156	2428	798	4006
8	3509	2700	912	4454
9	3863	2972	1026	4903
10	4217	3244	1140	5532
Each Additional Member	+354	+272	+114	+449

## Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090, 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510, 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510, 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090, 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

**WAC 388-478-0065 Income and resource standards for family medical programs.** (1) The categorically needy income level (CNIL) standard for family medical is the same as the grant payment standards for the TANF cash program as stated in WAC 388-478-0020.

(2) The countable resource standards for family medical are the same as those of the TANF/SFA cash program as stated in WAC 388-470-0005.

(3) Each unborn child is counted as a household member when determining household size for:

- (a) Family medical;
- (b) Pregnancy medical; and
- (c) Children's medical.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530. 05-15-080, § 388-478-0065, filed 7/14/05, effective 8/14/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 673(2) (42 U.S.C. 9902(2)). 01-18-056, § 388-478-0065, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0065, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0710 and 388-508-0820.]

**WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN).** (1) Beginning January 1, 2005, the medically needy income level (MNIL) is:

(a) One person	\$579.00
(b) Two persons	\$592
(c) Three persons	\$667
(d) Four persons	\$742
(e) Five persons	\$858
(f) Six persons	\$975
(g) Seven persons	\$1,125
(h) Eight persons	\$1,242
(i) Nine persons	\$1,358
(j) Ten persons and more	\$1,483

(2) The MNIL standard for a person who meets institutional status requirements is in WAC 388-513-1305(3).

(3) Countable resource standards for the MN program is:

(a) One person	\$2,000
(b) Two persons	\$3,000
(c) For each additional family member add	\$50

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 9902(2). 05-06-090, § 388-478-0070, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 1396r-5. 02-10-116, § 388-478-0070, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and Section 1924 (42 U.S.C. 1396R-5). 01-12-073, § 388-478-0070, filed 6/4/01, effective 7/5/01. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, and 74.09.575. 00-10-095, § 388-478-0070, filed 5/2/00, effective 5/2/00; 99-11-054, § 388-478-0070, filed 5/17/99, effective 6/17/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0070, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0710, 388-507-0720, 388-511-1115, 388-518-1820, 388-518-1830, 388-518-1840 and 388-518-1850.]

**WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL).** (1) The department bases the income standard upon the federal poverty level (FPL) for the following medical programs:

FAMILY SIZE	100% FPL Benchmark	133% FPL	150% FPL
1	\$798	\$1061	\$1197
2	\$1070	\$1422	\$1604
3	\$1341	\$1784	\$2012
4	\$1613	\$2145	\$2419
5	\$1885	\$2506	\$2827
6	\$2156	\$2868	\$3234
7	\$2428	\$3229	\$3642
8	\$2700	\$3590	\$4049
9	\$2971	\$3952	\$4457
10	\$3243	\$4313	\$4864
Add to the ten person standard for each person over ten:			
	\$272	\$362	\$408

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 9902(2). 05-17-157, § 388-478-0075, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 74.08.090, 74.04.057, 74.04.050, and 74.09.530. 04-15-092, § 388-478-0075, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and 42 U.S.C. 9902(2). 03-15-088, § 388-478-0075, filed 7/17/03, effective 7/17/03. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-478-0075, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.500, 74.09.510, and Section 1902 (a)(10)(A)(ii)(XV) and (XVI) of the Social Security Act. 02-07-090, § 388-478-0075, filed 3/19/02, effective 4/1/02. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 673(2) (42 U.S.C. 9902(2)). 01-18-056, § 388-478-0075, filed 8/30/01, effective 9/30/01; 00-17-085, § 388-478-0075, filed 8/14/00, effective 9/14/00; 99-19-005, § 388-478-0075, filed 9/3/99, effective 10/4/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0075, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0805, 388-508-0810, 388-509-0910, 388-509-0920, 388-509-0940 and 388-509-0960.]

**WAC 388-478-0080 Supplemental Security Income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards.** (1) The SSI payment standards, also known as the federal benefit rate (FBR), beginning January 1, 2005 are:

(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)

Individual	\$579
Individual with an ineligible spouse	\$579
Couple	\$869

(a) Pregnant women's program up to one hundred eighty-five percent of FPL;

(b) Children's categorically needy program up to two hundred percent of FPL;

(c) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

(d) The state children's health insurance program (SCHIP) is over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a Medicaid child.

(3) There are no resource limits for the programs under this section.

(4) Beginning April 1, 2005, the monthly FPL standards are:

185% FPL	200% FPL	220% FPL	250% FPL
\$1476	\$1595	\$1755	\$1994
\$1978	\$2139	\$2353	\$2673
\$2481	\$2682	\$2950	\$3353
\$2984	\$3225	\$3548	\$4032
\$3486	\$3769	\$4146	\$4711
\$3989	\$4312	\$4743	\$5390
\$4491	\$4855	\$5341	\$6069
\$4994	\$5399	\$5939	\$6748
\$5497	\$5942	\$6536	\$7428
\$5999	\$6485	\$7134	\$8107
\$503	\$544	\$598	\$680

(b) Shared living (in the home of another)

Individual	\$386
Individual with an ineligible spouse	\$386
Couple	\$579

(c) Living in an institution

Individual	\$30
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(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) The SSI-related CNIL standards are:

(a) Single person	\$579.00
(b) Married couple - both eligible	869.00
(c) Supplied shelter - single person	386.00
(d) Supplied shelter couple - both eligible	579.00

(4) The countable resource standards for SSI and SSI-related CN medical programs are:

(a) One person	\$2,000
(b) A legally married couple	\$3,000

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 9902(2). 05-06-090, § 388-478-0080, filed 3/1/05, effective 4/1/05; 04-16-107, § 388-478-0080, filed 8/3/04, effective 9/3/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 1396r-5. 02-10-116, § 388-478-0080, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and Section 1924 (42 U.S.C. 1396R-5). 01-12-073, § 388-478-0080, filed 6/4/01,

effective 7/5/01. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, and 74.09.575. 00-10-095, § 388-478-0080, filed 5/2/00, effective 5/2/00; 99-11-054, § 388-478-0080, filed 5/17/99, effective 6/17/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0080, filed 7/31/98, effective 9/1/98. Formerly WAC 388-511-1110.]

**WAC 388-478-0085 Medicare savings programs—Monthly income and countable resources standards.** (1) The qualified Medicare beneficiary (QMB) program income standard is up to one hundred percent of the federal poverty level (FPL). Beginning April 1, 2005, the QMB program's income standards are:

- |                 |        |
|-----------------|--------|
| (a) One person  | \$798  |
| (b) Two persons | \$1070 |

(2) The special low-income Medicare beneficiary (SLMB) program income standard is over one hundred percent of FPL, but not more than one hundred twenty percent of FPL. Beginning April 1, 2005, the SLMB program's income standards are:

- |                 | Minimum   | Maximum |
|-----------------|-----------|---------|
| (a) One person  | \$798.01  | \$957   |
| (b) Two persons | \$1070.01 | \$1283  |

(3) The qualified individual (QI-1) program income standard is over one hundred twenty percent of FPL, but not more than one hundred thirty-five percent of FPL. Beginning April 1, 2005, the QI-1 program's income standards are:

- |                 | Minimum   | Maximum |
|-----------------|-----------|---------|
| (a) One person  | \$957.01  | \$1077  |
| (b) Two persons | \$1283.01 | \$1444  |

(4) The qualified disabled working individual (QDWI) program income standard is two hundred percent of FPL. Beginning April 1, 2005, the QDWI program's income standards are:

- |                 |        |
|-----------------|--------|
| (a) One person  | \$1595 |
| (b) Two persons | \$2139 |

(5) The resource standard for the Medicare savings programs in this section is:

- |                 |        |
|-----------------|--------|
| (a) One person  | \$4000 |
| (b) Two persons | \$6000 |

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 9902(2). 05-17-157, § 388-478-0085, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). 04-17-076, § 388-478-0085, filed 8/13/04, effective 9/13/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 673(2) (42 U.S.C. 9902(2)). 01-18-056, § 388-478-0085, filed 8/30/01, effective 9/30/01; 00-17-085, § 388-478-0085, filed 8/14/00, effective 9/14/00; 99-19-005, § 388-478-0085, filed 9/3/99, effective 10/4/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0085, filed 7/31/98, effective 9/1/98. Formerly WAC 388-517-1715, 388-517-1730, 388-517-1750 and 388-517-1770.]

## Chapter 388-489 WAC

### TRANSITIONAL FOOD ASSISTANCE

#### WAC

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|--------------|--|
| 388-489-0005 | Who is eligible for transitional food assistance?          |
| 388-489-0010 | How is my transitional food assistance benefit calculated? |

- |              |  |
|--------------|--|
| 388-489-0015 | How long will my family receive transitional food assistance?  |
| 388-489-0020 | Am I required to report changes in my household's circumstances while on transitional food assistance? |
| 388-489-0025 | Can my transitional food assistance benefits end before the end of my five-month transition period?    |

**WAC 388-489-0005 Who is eligible for transitional food assistance?** If your family stops receiving temporary assistance for needy families cash benefits, including benefits from a tribal program, you will be eligible for transitional food assistance for up to five months if you meet all the following eligibility requirements:

(1) Your family was receiving Basic Food at the time we determined you were no longer eligible for temporary assistance for needy families;

(2) After your family stops receiving temporary assistance for needy families, no other member of your Basic Food assistance unit continues to receive temporary assistance for needy families;

(3) Your family did not move out of the state of Washington (WAC 388-468-0005);

(4) Your family was not in sanction status at the time your temporary assistance for needy families grant ended. Sanction status means:

(a) We reduced or stopped your family's temporary assistance for needy families grant payment because a family member is not:

(i) Meeting WorkFirst program requirements (WAC 388-310-1600); or

(ii) Cooperating with the division of child support (WAC 388-422-0100); or

(b) We decided that a member of your family was not eligible for temporary assistance for needy families because the member:

(i) Failed to meet teen parent living arrangement (WAC 388-486-0005) or teen parent school attendance requirements (WAC 388-410-0010); or

(ii) Was convicted of unlawful practices (WAC 388-446-0005) or for receiving temporary assistance for needy families in two or more states at the same time (WAC 388-446-0010); or

(c) If you are receiving temporary assistance for needy families benefits from a tribal program, your family's grant is reduced or stopped for a reason that is the same as one of the reasons listed in (4)(a) or (4)(b) of this section.

(5) At the time your family's temporary assistance for needy families grant ended, your Basic Food assistance unit did not become ineligible because:

(a) You were applying for recertification of your Basic Food benefits and refused to cooperate with the application process; or

(b) All members are ineligible for Basic Food for the reasons stated in WAC 388-489-0025(3).

(6) There is no limit to the number of times your family may leave temporary assistance for needy families and receive transitional food assistance.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-489-0005, filed 9/16/05, effective 11/1/05.]

**WAC 388-489-0010 How is my transitional food assistance benefit calculated?** (1) We base your transitional food assistance benefit amount on the regular monthly benefit allotment issued to your Basic Food assistance unit for the last month your family received temporary assistance for needy families. We will not count your last temporary assistance for needy families grant payment when we calculate your transitional food assistance benefit amount. For example:

(a) If your Basic Food assistance unit's only income was temporary assistance for needy families, the transitional food assistance benefit will be the amount your household would have received if you had no income.

(b) If your Basic Food benefit was calculated using temporary assistance for needy families plus income from another source, we will count only the income from the other source when calculating the transitional food assistance amount.

(2) We will adjust your transitional food assistance benefits if:

(a) Someone who gets transitional food assistance with you leaves your assistance unit and is found eligible to receive Basic Food in another assistance unit. We will reduce your transitional food assistance based on the number of persons who left your assistance unit and become eligible in another Basic Food assistance unit.

(b) A change to the maximum allotment for Basic Food under WAC 388-478-0060 results in an increase in benefits for Basic Food assistance units.

(c) You got an overpayment of Basic Food benefits and we need to adjust the amount we deduct from your monthly benefits to repay the overpayment as required in WAC 388-410-0033. This includes:

- (i) Starting a new monthly deduction;
- (ii) Changing the amount of the monthly deduction; and
- (iii) Ending the monthly deduction when the amount you owe has been paid off.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-489-0010, filed 9/16/05, effective 11/1/05.]

**WAC 388-489-0015 How long will my family receive transitional food assistance?** If your Basic Food assistance unit is eligible for transitional food assistance according to WAC 388-489-0005, you will receive transitional food assistance for up to five months after your family leaves temporary assistance for needy families.

(1) If you stopped getting temporary assistance for needy families from the department, you are eligible for transitional benefits beginning the month after your family received their last grant.

(2) If you stopped receiving tribal TANF benefits, you are eligible for transitional benefits:

(a) With the next monthly issuance after we update your case to show you no longer have tribal TANF income, if the tribal TANF end date is the end of the current month or the end of a prior month; or

(b) On the first of the month following the tribal TANF end date, if the tribal TANF end date is the end of a future month.

(3) If necessary, we will extend or shorten your Basic Food assistance unit's current certification period to match the five-month transition period.

(4) You may choose to end your five-month transition period early by submitting an application for regular Basic Food under WAC 388-489-0020 or by asking us to terminate your benefits.

(5) We send you a notice before the end of your five-month transition period so you can reapply for regular Basic Food benefits and continue to receive benefits without interruption as described in WAC 388-434-0010.

(6) We may terminate your transitional food assistance early for the reasons stated in WAC 388-489-0025.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-489-0015, filed 9/16/05, effective 11/1/05.]

**WAC 388-489-0020 Am I required to report changes in my household's circumstances while on transitional food assistance?** (1) If you only receive transitional food assistance, you are not required to report any changes in your household circumstances.

(2) If you receive benefits from another cash or medical assistance program, you must meet the reporting requirements for the other program as required by WAC 388-418-0005. Except for changes listed under WAC 388-489-0025, the changes you report for the other program will not affect your family's eligibility for transitional food assistance.

(3) If you experience a change in circumstances during your five-month transition period, and you think that you may be eligible for more food assistance, you may submit an application for the regular Basic Food program. Examples of such changes include the loss of income by a person who gets transitional food assistance with you or adding a new person to your household.

(a) If you submit a new application, we will determine your eligibility for Basic Food and allow you to choose if you want to remain on transitional food assistance or receive regular Basic Food benefits.

(b) If you choose to go back on Basic Food and are found eligible, we will start your new benefit amount on the first day of the month after we receive your application for Basic Food. If you have already received transitional food assistance for this month and are eligible for more assistance on the Basic Food program, we will pay you the additional amount.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-489-0020, filed 9/16/05, effective 11/1/05.]

**WAC 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period?** Your transitional food assistance benefits will end early if:

(1) Someone who gets transitional food assistance with you applies and is approved for temporary assistance for needy families while still living in your home. You may reapply to have your eligibility for Basic Food determined;

(2) We learn that you and your family are no longer residing in the state of Washington; or

(3) **All members** of your household are eligible to get Basic Food for any of the following reasons:

- (a) Refusal to cooperate with quality assurance (WAC 388-464-0001);
- (b) Transfer of property to qualify for Basic Food assistance (WAC 388-488-0010);
- (c) Intentional program violation (WAC 388-466-0015 and WAC 388-446-0020);
- (d) Fleeing felon or violating a condition of probation or parole (WAC 388-442-0010);
- (e) Alien status (WAC 388-424-0020 and WAC 388-424-0025);
- (f) Employment and training requirements (WAC 388-444-0055 and WAC 388-444-0075);
- (g) Work requirements for able-bodied adults without dependents (WAC 388-444-0030);
- (h) Student status (WAC 388-482-0005);
- (i) Living in an institution where residents are not eligible for Basic Food (WAC 388-408-0040); or
- (j) Deceased.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. 05-19-060, § 388-489-0025, filed 9/16/05, effective 11/1/05.]

### Chapter 388-492 WAC WASHINGTON COMBINED APPLICATION PROJECT

#### WAC

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|--------------|--|
| 388-492-0040 | Can I choose whether I get WASHCAP food benefits or Basic Food benefits? |
| 388-492-0070 | How are my WASHCAP food benefits calculated?                             |

**WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits?** You can choose to have Basic Food benefits instead of WASHCAP food benefits when:

- (1) Your nonutility shelter costs as defined in WAC 388-450-0190 (1)(a) through (d) are more than five hundred forty-four dollars a month;
- (2) Your out-of-pocket medical expenses are more than thirty-five dollars a month; or
- (3) You chose to have Basic Food benefits instead of WASHCAP benefits prior to January 1, 2005.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-18-036, § 388-492-0040, filed 8/30/05, effective 10/1/05; 05-08-009, § 388-492-0040, filed 3/25/05, effective 4/25/05; 04-23-026, § 388-492-0040, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-492-0040, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 03-01-045, § 388-492-0040, filed 12/10/02, effective 1/10/03; 02-15-148, § 388-492-0040, filed 7/22/02, effective 9/1/02; 01-21-058, § 388-492-0040, filed 10/16/01, effective 12/1/01.]

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless

you report a change as described under WAC 388-492-0080. If you pay:

- (a) Three hundred twenty-nine dollars or more a month for shelter, we use three hundred forty dollars as your shelter cost; or
- (b) Less than three hundred twenty-nine dollars for shelter, we use one hundred sixty-four dollars as your shelter cost; and
- (c) We add the current limited utility allowance under WAC 388-450-0195 to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
- (6) We figure your WASHCAP food benefits (allotment) by:

- (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
- (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

- (c) If you are eligible for WASHCAP, you will get at least ten dollars in food benefits each month.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 05-17-155, § 388-492-0070, filed 8/22/05, effective 10/1/05; 05-08-008, § 388-492-0070, filed 3/25/05, effective 4/25/05; 04-23-026, § 388-492-0070, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-492-0070, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 03-01-045, § 388-492-0070, filed 12/10/02, effective 1/10/03; 02-15-148, § 388-492-0070, filed 7/22/02, effective 9/1/02; 01-21-058, § 388-492-0070, filed 10/16/01, effective 12/1/01.]

### Chapter 388-501 WAC ADMINISTRATION OF MEDICAL PROGRAMS— GENERAL

#### WAC

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|--------------|--|
| 388-501-0165 | Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment. |
|--------------|--|

**WAC 388-501-0165 Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment.** (1) This section applies to fee-for-service (FFS) requests for medical or dental services and medical equipment that:

- (a) Are identified as covered services or EPSDT services; and
- (b) Require prior authorization by the department.
- (2) The following definitions and those found in WAC 388-500-0005 apply to this section:

**"Controlled studies"**—Studies in which defined groups are compared with each other to reduce bias.

**"Credible evidence"**—Type I-IV evidence or evidence-based information from any of the following sources:

- Clinical guidelines
- Government sources
- Independent Medical Evaluation (IME)
- Independent Review Organization (IRO)
- Independent technology assessment organizations
- Medical and hospital associations

- Policies of other health plans
- Regulating agencies (e.g., Federal Drug Administration or Department of Health)
- Treating provider
- Treatment pathways

**"Evidence-based"**—The ordered and explicit use of the best evidence available (see "hierarchy of evidence" in subsection (6)(a) of this section) when making health care decisions.

**"Health outcome"**—Changes in health status (mortality and morbidity) which result from the provision of health care services.

**"Institutional review board (IRB)"**—A board or committee responsible for reviewing research protocols and determining whether:

- (1) The rights and welfare of human subjects are adequately protected;
- (2) The risks to individuals are minimized and are not unreasonable;
- (3) The risks to individuals are outweighed by the potential benefit to them or by the knowledge to be gained; and
- (4) The proposed study design and methods are adequate and appropriate in the light of stated study objectives.

**"Independent review organization (IRO)"**—A panel of medical and benefit experts intended to provide unbiased, independent, clinical, evidence-based reviews of adverse decisions.

**"Independent medical evaluation (IME)"**—An objective medical examination of the client to establish the medical facts.

**"Provider"**—The individual who is responsible for diagnosing, prescribing, and providing medical, dental, or mental health services to department clients.

(3) The department authorizes, on a case-by-case basis, requests described in subsection (1) when the department determines the service or equipment is medically necessary as defined in WAC 388-500-0005. The process the department uses to assess medical necessity is based on:

- (a) The evaluation of submitted and obtainable medical, dental, or mental health evidence as described in subsections (4) and (5) of this section; and

(b) The application of the evidence-based rating process described in subsection (6) of this section.

(4) The department reviews available evidence relevant to a medical, dental, or mental health service or equipment to:

- (a) Determine its efficacy, effectiveness, and safety;
- (b) Determine its impact on health outcomes;
- (c) Identify indications for use;
- (d) Evaluate pertinent client information;
- (e) Compare to alternative technologies; and
- (f) Identify sources of credible evidence that use and report evidence-based information.

(5) The department considers and evaluates all available clinical information and credible evidence relevant to the client's condition. At the time of request, the provider responsible for the client's diagnosis and/or treatment must submit credible evidence specifically related to the client's condition, including but not limited to:

- (a) A client-specific physiological description of the disease, injury, impairment, or other ailment;
- (b) Pertinent laboratory findings;

- (c) Pertinent X-ray and/or imaging reports;
- (d) Individual patient records pertinent to the case or request;

(e) Photographs and/or videos when requested by the department; and

(f) Objective medical/dental/mental health information such as medically/dentally acceptable clinical findings and diagnoses resulting from physical or mental examinations.

(6) The department uses the following processes to determine whether a requested service described in subsection (1) is medically necessary:

(a) **Hierarchy of evidence—How defined.** The department uses a hierarchy of evidence to determine the weight given to available data. The weight of medical evidence depends on objective indicators of its validity and reliability including the nature and source of the evidence, the empirical characteristics of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies. The hierarchy (in descending order with Type I given the greatest weight) is:

(i) Type I: Meta-analysis done with multiple, well-designed controlled studies;

(ii) Type II: One or more well-designed experimental studies;

(iii) Type III: Well-designed, quasi-experimental studies such as nonrandomized controlled, single group pre-post, cohort, time series, or matched case-controlled studies;

(iv) Type IV: Well-designed, nonexperimental studies, such as comparative and correlation descriptive, and case studies (uncontrolled); and

(v) Type V: Credible evidence submitted by the provider.

(b) **Hierarchy of evidence—How classified.** Based on the quality of available evidence, the department determines if the requested service is effective and safe for the client by classifying it as an "A," "B," "C," or "D" level of evidence:

(i) **"A" level evidence:** Shows the requested service or equipment is a proven benefit to the client's condition by strong scientific literature and well-designed clinical trials such as Type I evidence or multiple Type II evidence or combinations of Type II, III or IV evidence with consistent results (An "A" rating cannot be based on Type III or Type IV evidence alone).

(ii) **"B" level evidence:** Shows the requested service or equipment has some proven benefit supported by:

(A) Multiple Type II or III evidence or combinations of Type II, III or IV evidence with generally consistent findings of effectiveness and safety (A "B" rating cannot be based on Type IV evidence alone); or

(B) Singular Type II, III, or IV evidence in combination with department-recognized:

(I) Clinical guidelines; or

(II) Treatment pathways; or

(III) Other guidelines that use the hierarchy of evidence in establishing the rationale for existing standards.

(iii) **"C" level evidence:** Shows only weak and inconclusive evidence regarding safety and/or efficacy such as:

(A) Type II, III, or IV evidence with inconsistent findings; or

(B) Only Type V evidence is available.

(iv) **"D" level evidence:** Is not supported by any evidence regarding its safety and efficacy, for example that which is considered investigational or experimental.

(c) **Hierarchy of evidence—How applied.** After classifying the available evidence, the department:

(i) Approves **"A"** and **"B"** rated requests if the service or equipment:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; and

(B) Is not more costly than an equally effective alternative treatment.

(ii) Approves a **"C"** rated request only if the provider shows the requested service is the optimal intervention for meeting the client's specific condition or treatment needs, and:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; and

(B) Is less costly to the department than an equally effective alternative treatment; and

(C) Is the next reasonable step for the client in a well-documented tried-and-failed attempt at evidence-based care.

(iii) Denies **"D"** rated requests unless:

(A) The requested service or equipment has a humanitarian device exemption from the Food And Drug Administration (FDA); or

(B) There is a local institutional review board (IRB) protocol addressing issues of efficacy and safety of the requested service that satisfies both the department and the requesting provider.

(7) Within fifteen days of receiving the request from the client's provider, the department reviews all evidence submitted and:

(a) Approves the request;

(b) Denies the request if the requested service is not medically necessary; or

(c) Requests the provider submit additional justifying information. The department sends a copy of the request to the client at the same time.

(i) The provider must submit the additional information within thirty days of the department's request.

(ii) The department approves or denies the request within five business days of the receipt of the additional information.

(iii) If the provider fails to provide the additional information, the department will deny the requested service.

(8) When the department denies all or part of a request for a covered service(s) or equipment, the department sends the client and the provider written notice, within ten business days of the date the information is received, that:

(a) Includes a statement of the action the department intends to take;

(b) Includes the specific factual basis for the intended action;

(c) Includes reference to the specific WAC provision upon which the denial is based;

(d) Is in sufficient detail to enable the recipient to:

(i) Learn why the department's action was taken; and

(ii) Prepare an appropriate response.

(e) Is in sufficient detail to determine what additional or different information might be provided to challenge the department's determination;

(f) Includes the client's administrative hearing rights;

(g) Includes an explanation of the circumstances under which the denied service is continued or reinstated if a hearing is requested; and

(h) Includes examples(s) of "lesser cost alternatives" that permit the affected party to prepare an appropriate response.

(9) If an administrative hearing is requested, the department or the client may request an independent review organization (IRO) or independent medical examination (IME) to provide an opinion regarding whether the requested service or equipment is medically necessary. The department will pay for the independent assessment if the department agrees that it is necessary, or an administrative law judge orders the assessment.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-23-031, § 388-501-0165, filed 11/8/05, effective 12/9/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.09.035, 00-03-035, § 388-501-0165, filed 1/12/00, effective 2/12/00. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-501-0165, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-038.]

## Chapter 388-503 WAC

### PERSONS ELIGIBLE FOR MEDICAL ASSISTANCE

#### WAC

388-503-0510

How a client is determined "related to" a categorical program.

**WAC 388-503-0510 How a client is determined "related to" a categorical program.** (1) A person is related to the Supplemental Security Income (SSI) program if they are:

(a) Aged, blind, or disabled as defined in WAC 388-511-1105(1) or chapter 388-475 WAC; or

(b) Considered as eligible for SSI under WAC 388-511-1105(5) or chapter 388-475 WAC; or

(c) Children meeting the requirements of WAC 388-505-0210(5).

(2) A person or family is considered to be related to the temporary assistance for needy families (TANF) program if they:

(a) Meet the program requirements for the TANF cash assistance programs or the requirements of WAC 388-505-0220; or

(b) Would meet such requirements except that the assistance unit's countable income exceeds the TANF program standards in WAC 388-478-0065.

(3) Persons related to SSI or to TANF are eligible for categorically needy (CN) or medically needy (MN) medical coverage if they meet the other eligibility criteria for these medical programs. See chapters 388-475, 388-505 and 388-519 WAC for these eligibility criteria.

(4) Persons related to SSI or to TANF and who receive the related CN medical coverage have redetermination rights as described in WAC 388-503-0505(6).

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530, 05-07-097, § 388-503-0510, filed 3/17/05, effective 4/17/05. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415, 02-17-030, § 388-503-0510, filed 8/12/02, effective 9/12/02.]

Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-503-0510, filed 7/31/98, effective 9/1/98.]

## Chapter 388-505 WAC

### FAMILY MEDICAL

#### WAC

388-505-0210 Children's medical eligibility.  
388-505-0220 Family medical eligibility.

#### WAC 388-505-0210 Children's medical eligibility.

(1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:

(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:

(a) Citizenship or U.S. national status as defined in WAC 388-424-0001 or "qualified alien" status as described in WAC 388-424-0006 (1) or (4);

(b) State residence as described in chapter 388-468 WAC;

(c) A Social Security number as described in chapter 388-476 WAC; and

(d) Family income does not exceed two hundred percent federal poverty level (FPL) as described in WAC 388-478-0075 at each application or review.

(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:

(a) They meet the requirements of subsection (2)(a), (b), and (c) of this section;

(b) They do not have other creditable health insurance coverage; and

(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075.

(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Income levels described in WAC 388-478-0075; and

(c) One of the following criteria:

(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;

(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;

(iii) Are in foster care; or

(iv) Receive subsidized adoption services.

(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.

(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(c).

(5) Children are eligible for CN medical assistance if they:

(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or

(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal disability definitions, would be eligible for SSI cash assistance.

(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income above two hundred fifty percent federal poverty level (FPL) as described in WAC 388-478-0075.

(7) A child is eligible for SSI-related MN when the child:

(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and

(b) Has countable income above the level described in WAC 388-478-0070(1).

(8) Noncitizen children under the age of eighteen, including visitors or students from another country, undocumented children and "qualified alien" children as defined in WAC 388-424-0001 who are ineligible due to the five-year bar as described in WAC 388-424-0006(3), are eligible for the state-funded children's health program, if:

(a) The department determines the child ineligible for any CN or MN scope of care medical program;

(b) Family income does not exceed one hundred percent federal poverty level (FPL) as described in WAC 388-478-0075;

(c) They meet state residence as described in chapter 388-468 WAC; and

(d) Program limits established by the legislature would not result in an overexpenditure of funds.

(9) There are no resource limits for children under CN, MN, SCHIP, or children's health coverage.

(10) Children may also be eligible for:

(a) Family medical as described in WAC 388-505-0220; or

(b) Medical extensions as described in WAC 388-523-0100.

(11) Except for a client described in subsection (4)(c)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

[Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. 05-23-013, § 388-505-0210, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 04-15-057, § 388-505-0210, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.08.090 and 74.04.050. 03-14-107, § 388-505-0210, filed 6/30/03, effective 7/31/03. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-505-0210, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.04.050, [74.04.1055, and [74.04.1057. 01-11-110, § 388-505-0210, filed 5/21/01, effective 6/21/01. Statutory Authority: RCW 74.08.090 and 74.08A.100. 99-17-023, § 388-505-0210, filed 8/10/99, effective 9/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-505-0210, filed 7/31/98, effective 9/1/98. Formerly WAC 388-509-0905, 388-509-0910 and 388-509-0920.]



**WAC 388-505-0220 Family medical eligibility.** (1) A person is eligible for categorically needy (CN) medical assistance when they are:

- (a) Receiving temporary assistance for needy families (TANF) cash benefits;
- (b) Receiving Tribal TANF;
- (c) Receiving cash diversion assistance, except SFA relatable families, described in chapter 388-222 WAC;
- (d) Eligible for TANF cash benefits but choose not to receive; or

(e) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.

(2) An adult cannot receive a family Medicaid program unless the household includes a child who is eligible for:

- (a) Family Medicaid;
- (b) SSI; or
- (c) Children's Medicaid.

(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:

(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;

(c) Is an unmarried minor parent who is not in a department-approved living situation;

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed ninety days;

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;

(f) Was convicted of a drug related felony;

(g) Was convicted of receiving benefits unlawfully;

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;

(i) Has gross earnings exceeding the TANF gross income level; or

(j) Is not cooperating with WorkFirst requirements.

(4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

(5) Except for a client described in WAC 388-505-0210 (4)(c)(i) and (ii), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530. 05-16-127, § 388-505-0220, filed 8/3/05, effective 9/3/05. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-505-0220, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.04.050, [74.04.]055, and [74.04.]057. 01-11-110, § 388-505-0220, filed 5/21/01, effective 6/21/01; 98-16-044, § 388-505-0220, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0740 and 388-522-2210.]

## Chapter 388-513 WAC

### CLIENT NOT IN OWN HOME—INSTITUTIONAL MEDICAL

#### WAC

- 388-513-1350 Defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services.
- 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.

**WAC 388-513-1350 Defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services.** This section describes how the department defines the resource standard and available resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (5) through (8); or

(b) Three thousand dollars for a legally married couple, unless subsection (2) applies.

(2) If the department has already established eligibility for one spouse, then it applies the standard described in subsection (1)(a) to each spouse, unless doing so would make one of the spouses ineligible.

(3) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility and limits;

(b) WAC 388-475-0250, How to determine who owns a resource;

(c) WAC 388-470-0060(6), Resources of an alien's sponsor; and

(d) WAC 388-506-0620, SSI-related medical clients.

(4) For LTC services the department determines a client's nonexcluded resources as follows:

(a) For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550;

(b) For an SSI-related client who has a community spouse, the department:

(i) Excludes resources described in WAC 388-513-1360; and

(ii) Adds together the available resources of both spouses according to subsection (5)(a) or (b) as appropriate;

(c) For a client not described in subsection (4)(a) or (b), the department applies the resource rules of the program used to relate the client to medical eligibility.

(5) The department determines available resources of a legally married client, when both spouses are institutionalized, by following WAC 388-506-0620 (5) and (6). For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of nonexcluded resources held in the name of:

- (i) The institutionalized spouse; or
- (ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

- (i) Either spouse; or
- (ii) Both spouses.

(6) If subsection (5)(b) applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ninety-five thousand one hundred dollars effective January 1, 2005; or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection (6)(a); or

(ii) The state spousal resource standard of forty thousand dollars.

(7) The amount of the spousal share described in (6)(b)(i) is determined sometime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client will be required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(8) The amount of allocated resources described in subsection (6) can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC or by consent order, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(9) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (10)(a), (b), or (c) applies.

(10) A redetermination of the couple's resources as described in subsections (4)(b) or (c) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection (5)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (6) or (8) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2), 05-07-033, § 388-513-1350, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5). 04-04-072, § 388-513-1350, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5). 01-18-055, § 388-513-1350, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j)(2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. 00-01-051, § 388-513-1350, filed 12/8/99, effective 1/8/00. Statutory Authority: RCW 74.08.090 and 74.09.500. 99-06-045, § 388-513-1350, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.575 and Section 1924 (42 USC 1396r-5). 98-11-033, § 388-513-1350, filed 5/14/98, effective 6/14/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090 and 74.09.575. 97-09-112, § 388-513-1350, filed 4/23/97, effective 5/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. 96-09-033 (Order 3963), § 388-513-1350, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. 95-05-022 (Order 3832), § 388-513-1350, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. 94-23-129 (Order 3808), § 388-513-1350, filed 11/23/94, effective 12/24/94; 94-10-065 (Order 3732), § 388-513-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-337 and 388-95-340.]

#### **WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.**

This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical facility, the department applies all subsections of this rule.

(2) For a client receiving waived services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, the department applies rules used for the community options program entry system (COPES).

(4) Excess resources are reduced in an amount equal to incurred medical expenses (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(c) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income up to a total of the medically needy income level (MNIL) in the following order:

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives a VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all other clients in a medical facility.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the Supplemental Security Income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2005, two thousand three hundred seventy-eight dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand five hundred sixty-two dollars; and

(B) Excess shelter expenses as specified under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse who:

(i) Resides with the community spouse, equal to one-third of the amount that one thousand five hundred sixty-two dollars exceeds the dependent family member's income.

(ii) Does not reside with the community spouse, equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources.

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption and reviews the client's circumstances after ninety days.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred sixty-nine dollars, effective April 1, 2004; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2), 05-07-033, § 388-513-1380, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5), 04-04-072, § 388-513-1380, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5), 01-18-055, § 388-513-1380, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and Section 1924(g) of the Social Security Act, 00-17-058, § 388-513-1380, filed 8/9/00, effective 9/9/00. Statutory Authority: RCW 72.36.160, 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924(g) of the Social Security Act, Section 4715 of the BBA of 1997 (Public Law 105-33, HR 2015), 99-11-017, § 388-513-1380, filed 5/10/99, effective 6/10/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 43.20B.460, 11.92.180, and Section 1924 (42 USC 396r-5), 98-08-077, § 388-513-1380, filed 3/31/98, effective 4/1/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and Social Security Act, Federal Register, March 10, 1997, pgs. 10856 - 10859, 42 U.S.C. 1396 (a)(1)(m), 97-16-008, § 388-513-1380, filed 7/24/97, effective 8/1/97.]

tive 7/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. 96-09-033 (Order 3963), § 388-513-1380, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090. 95-11-045 (Order 3848), § 388-513-1380, filed 5/10/95, effective 6/10/95. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. 95-05-022 (Order 3832), § 388-513-1380, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-513-1380, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-360.]

### Chapter 388-515 WAC

#### ALTERNATE LIVING—INSTITUTIONAL MEDICAL

##### WAC

388-515-1505	Community options program entry system (COPES).
388-515-1540	Medically needy residential waiver (MNRW) effective March 17, 2003.
388-515-1550	Medically needy in-home waiver (MNIW) effective May 1, 2004.

**WAC 388-515-1505 Community options program entry system (COPES).** This section describes the financial eligibility requirements for waiver services under the community options program entry system (COPES) and the rules used to determine a client's participation in the total cost of care.

- (1) To be eligible for COPES a client must:
  - (a) Be eighteen years of age or older;
  - (b) Meet the disability criteria of the Supplemental Security Income (SSI) program as described in WAC 388-503-0510(1);
  - (c) Require the level of care provided in a nursing facility as described in WAC 388-72A-0055;
  - (d) Be residing in a medical facility as defined in WAC 388-513-1301, or likely be placed in one within the next thirty days in the absence of waiver services described in WAC 388-71-0410 and 388-71-0415;
  - (e) Have attained institutional status as described in WAC 388-513-1320;
  - (f) Be determined in need of waived services and be approved for a plan of care as described in WAC 388-72A-0055;
  - (g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:
    - (i) Enhanced adult residential care (EARC) facility;
    - (ii) Licensed adult family home (AFH); or
    - (iii) Assisted living (AL) facility.
  - (h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and
  - (i) Meet the resource and income requirements described in subsections (2), (3) and (4).
- (2) Refer to WAC 388-513-1315 for rules used to determine nonexcluded resources and income.
- (3) Nonexcluded resources above the standard described in WAC 388-513-1350(1):
  - (a) Are allowed during the month of an application or eligibility review, when the combined total of excess resources and nonexcluded income does not exceed the special income level (SIL).
  - (b) Are reduced by incurred medical expenses (for definition, see WAC 388-519-0110(10)) that are not subject to

third-party payment and for which the client is liable, including:

- (i) Health insurance and Medicare premiums, deductions, and co-insurance charges; and
- (ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.
- (c) Not allocated to participation must be at or below the resource standard, otherwise the client is ineligible.
- (4) Nonexcluded income must be at or below the SIL and is allocated in the following order:
  - (a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;
  - (b) Maintenance and personal needs allowances as described in subsection (6), (7), and (8) of this section;
  - (c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;
  - (d) Income garnisheed for child support or withheld pursuant to a child support order:
    - (i) For the time period covered by the maintenance amount; and
    - (ii) Not deducted under another provision in the post-eligibility process.
  - (e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (6)(b) unless a greater amount is allocated as described in subsection (5) of this section. This amount:
    - (i) Is allowed only to the extent that the client's income is made available to the community spouse; and
    - (ii) Consists of a combined total of both:
      - (A) An amount added to the community spouse's gross income to provide a total equal to the amount allocated in WAC 388-513-1380 (6)(b); and
      - (B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:
        - (I) Rent;
        - (II) Mortgage;
        - (III) Taxes and insurance;
        - (IV) Any maintenance care for a condominium or cooperative; and
        - (V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;
    - (VI) LESS the standard shelter allocation listed in WAC 388-513-1380 (7)(a).
  - (f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:
    - (i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 (6)(b)(I)(A) that exceeds the dependent family member's income;
    - (ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent

family members. Child support received from an absent parent is the child's income;

(g) Incurred medical expenses described in subsection (3)(b) not used to reduce excess resources.

(5) The amount allocated to the community spouse may be greater than the amount in subsection (4)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(6) A client who receives SSI does not use income to participate in the cost of personal care, but does use SSI income to participate in paying costs of board and room. When such a client lives:

(a) At home, the client retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person federal poverty level (FPL), if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES services;

(iii) Up to the one-person MNIL if the client is living with a community spouse who is not receiving LTC services.

(b) In an EARC, AFH, or AL the client:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents;

(ii) Pays the facility for the cost of room and board. Room and board is the SSI Federal Benefit Rate (FBR) minus fifty-eight dollars and eighty-four cents; and

(iii) Retains the remainder of the income.

(7) An SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPES.

(b) In an ARC, EARC, AFH, or AL retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of board and room.

(8) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

(9) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (6), (7), and (8);

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)(a); and

(c) Guardianship fees and administrative costs in subsection (4)(c).

(10) The client's remaining income after the allocations described in subsections (4) through (8) is the client's participation in the total cost of care.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575. 05-03-077, § 388-515-1505, filed 1/17/05, effective 2/17/05; 02-05-003, § 388-515-1505, filed 2/7/02, effective 3/10/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500. 01-02-052, § 388-515-1505, filed 12/28/00, effective 1/28/01. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 42 C.F.R. 435.601, 42 C.F.R. 435.725-726, and Sections 4715 and 4735 of the Federal Balanced Budget Act of 1997 (P.L. 105-33) (H.R. 2015). 00-01-087, § 388-515-1505, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090. 96-14-058 (Order 100346), § 388-515-1505, filed 6/27/96, effective 7/28/96; 95-20-030 (Order 3899), § 388-515-1505, filed 9/27/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-515-1505, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-200.]

**WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003.** This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for Medicaid personal care or the COPES program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC 388-511-1105(1);

(d) Requires the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0400, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Has attained institutional status as described in WAC 388-513-1320;

(g) Has been determined to be in need of waiver services as described in WAC 388-106-0410;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

(i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meets the resource and income requirements described in subsections (2) through (6).

(2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350 (1) through (4)(a) and WAC 388-513-1360;

(3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spend down liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNRW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums.

(6) If the client's countable income is:

(a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC 388-106-0435;

(b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC 388-106-0435.

(7) The portion of a client's countable income over the department-contracted rate is called "excess income."

(8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.

(9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505 (7)(b);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-515-1540, filed 5/17/05, effective 6/17/05. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-515-1540, filed 6/12/03, effective 7/13/03.]

**WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004.** This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNIW, a client must:

(a) Not meet financial eligibility for Medicaid personal care or the COPES program;

(b) Be eighteen years of age or older;

(c) Meet the SSI-related criteria described in WAC 388-475-0050(1);

(d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Have attained institutional status as described in WAC 388-513-1320;

(g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;

(h) Be able to live at home with community support services and choose to remain at home;

(i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350 (1) through (4)(a) and 388-513-1360;

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spenddown liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the one person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spenddown liability;

(iii) Have not been used to reduce client responsibility toward cost of care; and

(iv) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person MNIL described in WAC 388-478-0070 (1)(a);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-11-082, § 388-515-1550, filed 5/17/05, effective 6/17/05. Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. 04-16-029, § 388-515-1550, filed 7/26/04, effective 8/26/04.]

## Chapter 388-517 WAC

### MEDICARE-RELATED MEDICAL ELIGIBILITY

#### WAC

388-517-0300	Federal Medicare savings and state-funded Medicare buy-in programs.
388-517-0310	Eligibility for federal Medicare savings and state-funded Medicare buy-in programs.
388-517-0320	Medicare savings and state-funded Medicare buy-in programs cover some client costs.

**WAC 388-517-0300 Federal Medicare savings and state-funded Medicare buy-in programs.** (1) Federal Medicare savings and state-funded Medicare buy-in programs help clients pay some of the costs that Medicare does not cover under WAC 388-517-0320 (for program eligibility, see WAC 388-517-0310).

(2) The department offers the following Medicare savings programs to eligible clients:

(a) Qualified medicare beneficiary (QMB);

(b) Specified low-income medicare beneficiary (SLMB);

(c) Qualified individual (QI-1); and

(d) Qualified disabled working individual (QDWI).

(3) The department offers the state-funded Medicare buy-in program for clients who receive Medicaid but do not qualify for the federal Medicare savings programs.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 42 U.S.C. 1396a(a) (Section 1902 (n)(2) of the Social Security Act of 1924). 05-14-125, § 388-517-0300, filed 7/1/05, effective 8/1/05. Statutory Authority: RCW 74.08.090, 74.09.530, 02-11-074, § 388-517-0300, filed 5/13/02, effective 6/13/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-517-0300, filed 7/31/98, effective 9/1/98. Formerly WAC 388-517-1710, 388-517-1730, 388-517-1750 and 388-517-1770.]

**WAC 388-517-0310 Eligibility for federal Medicare savings and state-funded Medicare buy-in programs.** (1) Persons eligible for any Medicare savings programs (MSP) must:

(a) Be eligible for or receiving Medicare Part A. Qualified disabled working individuals (QDWI) clients must be under age sixty-five;

(b) Meet program income standards, see WAC 388-478-0085; and

(c) Have resources at or below resource standards, see WAC 388-478-0085(6).

(2) MSP follow SSI related rules in chapter 388-475 WAC.

(3) MSP clients are entitled to a fair hearing when the department takes an adverse action such as denying or terminating MSP benefits.

(4) The department subtracts the allocations and deductions described under WAC 388-513-1380 from a long-term care client's countable income and resources when determining MSP eligibility:

(a) Allocations to a spouse and/or dependent family member; and

(b) Client participation in cost of care.

(5) Medicaid eligibility may affect MSP eligibility, as follows:

(a) Qualified medicare beneficiaries (QMB) and specified low income beneficiaries (SLMB) clients can receive Medicaid and still be eligible to receive QMB or SLMB benefits.

(b) Qualified individuals (QI-1) and qualified disabled working individuals (QDWI) clients who begin to receive Medicaid are no longer eligible for QI-1 or QDWI benefits.

(6) Every year, when the federal poverty level changes:

(a) The department adjusts income standards for MSP and state funded Medicare buy-in programs, see WAC 388-478-0085.

(b) The department begins to count the annual Social Security cost-of-living (COLA) increase on April 1st each year when determining eligibility for MSP and state funded Medicaid buy-in programs.

(7) There is no income limit for the state-funded Medicare buy-in program. The state-funded Medicare buy-in program is for clients who receive Medicaid but do not qualify for the federal MSP.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 42 U.S.C. 1396a(a) (Section 1902 (n)(2) of the Social Security Act of 1924). 05-14-125, § 388-517-0310, filed 7/1/05, effective 8/1/05.]

**WAC 388-517-0320 Medicare savings and state-funded Medicare buy-in programs cover some client**

**costs.** (1) For qualified medicare beneficiary (QMB) clients, the department:

(a) Pays Medicare Part A premiums (if any);

(b) Pays Medicare Part B premiums;

(c) Pays all coinsurance deductibles as described in subsection (6) of this section;

(d) May pay Medicare Advantage Part C premiums, if cost effective, for those clients already enrolled in Medicare Advantage Part C at the time of application for Medicare Advantage Part C premium payment. (The department does not select a Medicare Advantage Part C plan for QMB clients);

(e) Pays all coinsurance deductibles and co-payments for QMB-eligible clients enrolled in Medicare Advantage Part C as described in subsection (6) of this section; and

(f) Pays QMB premiums the first of the month following the month that QMB eligibility is determined.

(2) For specified low-income medicare beneficiary (SLMB) clients, the department pays Medicare Part B premiums effective up to three months prior to the certification period. No other payments are made for SLMBs.

(3) For qualified individual (QI-1) clients, the department pays Medicare Part B premiums effective up to three months prior to the certification period unless:

(a) The client receives Medicaid categorically needy (CN) or medically needy (MN) benefits; and/or

(b) The department's annual federal funding allotment is spent. The department resumes QI-1 benefit payments the beginning of the next calendar year.

(4) For qualified disabled working individual (QDWI) clients, the department pays Medicare Part A premiums effective up to three months prior to the certification period. The department stops paying Medicare Part A premiums if the client begins to receive CN or MN Medicaid.

(5) For state-funded Medicare buy-in program clients, the department pays Medicare:

(a) Part B premiums; and

(b) Part A and B co-insurance, deductibles, and co-payments described in subsection (6) of this section.

(6) The department limits payments for certain services, provided to Medicare savings and state-funded Medicare buy-in clients, as follows:

(a) If the Medicaid payment rate is higher than the amount paid by Medicare, the department pays only the cost-sharing liability of the Medicare co-insurance charge; and

(b) For Medicaid clients who are entitled to Medicare Part A and/or Medicare Part B (referred to as "dual eligible" clients):

(i) The department pays the Medicare or Medicaid payment rate, whichever is less, for services covered by both Medicare and Medicaid; and

(ii) The department pays the Medicare deductibles and co-insurance services only covered by Medicare.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 42 U.S.C. 1396a(a) (Section 1902 (n)(2) of the Social Security Act of 1924). 05-14-125, § 388-517-0320, filed 7/1/05, effective 8/1/05.]



## Chapter 388-519 WAC

## SPENDDOWN

## WAC

388-519-0110

Spenddown of excess income for the medically needy program.

**WAC 388-519-0110 Spenddown of excess income for the medically needy program.** (1) The person applying for MN medical coverage chooses a three month or a six month base period for spenddown calculation. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section apply.

(2) A person's base period begins on the first day of the month of application, subject to the exceptions in subsection (4) of this section.

(3) A separate base period may be made for a retroactive period. The retroactive base period is made up of the three calendar months immediately prior to the month of application.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) A client is not or will not be resource eligible for the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The client is or will be eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) The amount of a person's "spenddown" is calculated by the department. The MN countable income from each month of the base period is compared to the MNIL. The excess income from each of the months in the base period is added together to determine the "spenddown" for the base period.

(6) If income varies and a person's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC 388-519-0100(5).

(7) Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:

(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Second, medical expenses which would not be covered by the MN program;

(c) Third, hospital expenses paid by the person during the base period;

(d) Fourth, hospital expenses, regardless of age, owed by the applying person;

(e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and

(f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person.

(8) If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020.

(9) If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount.

(10) To be counted toward spenddown, medical expenses must:

(a) Not have been used to meet a previous spenddown; and

(b) Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:

(i) Forty-five days of the date of the service; or

(ii) Thirty days after the base period ends; and

(c) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period and be for services for:

(A) The applying person; or

(B) A family member legally or blood-related and living in the same household as the applying person.

(ii) Be for medical services either paid or unpaid and incurred during the base period; or

(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period.

(11) An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period.

(12) The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:

(a) Charges for services which would have been covered by the department's medical programs as described in chapter 388-529 WAC, less any confirmed third party payments which apply to the charges; and

(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and

(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and

(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days.

(13) Medical expenses may be used more than once if:

(a) The person did not meet their total spenddown amount and did not become eligible in that previous base period; and

(b) The medical expense was applied to that unsuccessful spenddown and remains an unpaid bill.

(14) To be considered toward spenddown, written proof of medical expenses must be presented to the department. The deadline for presenting medical expense information is thirty days after the base period ends unless good cause for delay can be documented.

(15) Once a person meets their spenddown and they are issued a medical identification card for MN coverage, newly identified expenses cannot be considered toward that spenddown. Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. 05-08-093, § 388-519-0110, filed 4/1/05, effective 5/2/05; 98-16-044, § 388-519-0110, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1830, 388-518-1840, 388-519-1905, 388-519-1910, 388-519-1930 and 388-522-2230.]

### Chapter 388-523 WAC MEDICAL EXTENSIONS

#### WAC

388-523-0130 Medical extension—Redetermination.

**WAC 388-523-0130 Medical extension—Redetermination.** (1) When the department determines the family or an individual family member is ineligible during the medical extension period, the department must determine if they are eligible for another medical program.

(2) Children are eligible for twelve month continuous eligibility beginning with the first month of the medical extension period.

(3) When a family reports a reduction of income, the family may be eligible for a family medical program instead of medical extension benefits.

(4) Postpartum and family planning extensions are described in WAC 388-462-0015.

[Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. 05-23-013, § 388-523-0130, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209. 02-10-018, § 388-523-0130, filed 4/22/02, effective 5/23/02.]

### Chapter 388-530 WAC PHARMACY SERVICES

#### WAC

388-530-1280 Preferred drug list(s).

**WAC 388-530-1280 Preferred drug list(s).** This section contains the medical assistance administration's (MAA) rules for preferred drug list(s) (PDL). Under RCW 69.41.190 and 70.14.050, MAA and other state agencies cooperate in developing and maintaining preferred drug list(s).

(1) The Washington preferred drug list (PDL):

(a) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(b) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(c) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(d) The appointing authority makes the final selection of drugs included on the Washington PDL.

(e) Nonpreferred drugs within a therapeutic class on the Washington PDL are subject to the therapeutic interchange program (TIP) according to WAC 388-530-1290.

(2) The medical assistance administration's (MAA's) PDL. Drugs on MAA's PDL:

(a) Are not part of the Washington PDL;

(b) Are not subject to TIP; and

(c) Continue to require prior authorization when they are designated as nonpreferred.

(3) Combination drugs that are not on the Washington PDL, that are not reviewed by the evidence-based practice center(s), and that are not subject to TIP under WAC 388-530-1290, are considered for coverage according to MAA's prior authorization program.

[Statutory Authority: RCW 69.41.190, 70.14.050, and 74.08.090. 05-11-078, § 388-530-1280, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 70.14.050, 69.41.150, 69.41.190, chapter 41.05 RCW. 05-02-044, § 388-530-1280, filed 12/30/04, effective 1/30/05.]

### Chapter 388-531 WAC PHYSICIAN-RELATED SERVICES

#### WAC

388-531-0150	Noncovered physician-related services—General and administrative.
388-531-0200	Physician-related services requiring prior authorization.
388-531-0250	Who can provide and bill for physician-related services.
388-531-0650	Hospital physician-related services not requiring authorization when provided in MAA-approved centers of excellence or hospitals authorized to provide the specific services.
388-531-1600	Bariatric surgery.
388-531-2000	Increased payments for physician-related services for qualified trauma cases.

**WAC 388-531-0150 Noncovered physician-related services—General and administrative.** (1) Except as provided in WAC 388-531-0100 and subsection (2) of this section, MAA does not cover the following:

(a) Acupuncture, massage, or massage therapy;

(b) Any service specifically excluded by statute;

(c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;

(d) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;

(e) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 388-501-0165;

(f) Hair transplantation;

(g) Marital counseling or sex therapy;

(h) More costly services when MAA determines that less costly, equally effective services are available;

(i) Vision-related services listed as noncovered in chapter 388-544 WAC;

(j) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 388-531-1750;

(k) Physician-supplied medication, except those drugs administered by the physician in the physician's office;

(l) Physical examinations or routine checkups, except as provided in WAC 388-531-0100;

(m) Routine foot care. This does not include clients who have a medical condition that affects the feet, such as diabetes or arteriosclerosis obliterans. Routine foot care includes, but is not limited to:

- (i) Treatment of mycotic disease;
- (ii) Removal of warts, corns, or calluses;
- (iii) Trimming of nails and other hygiene care; or
- (iv) Treatment of flat feet;

(n) Except as provided in WAC 388-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services.

(o) Nonmedical equipment; and

(p) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas.

(2) MAA covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

- (a) The EPSDT program;
- (b) A Medicaid program for qualified **Medicare** beneficiaries (QMBs); or
- (c) A waiver program.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-12-022, § 388-531-0150, filed 5/20/05, effective 6/20/05; 01-01-012, § 388-531-0150, filed 12/6/00, effective 1/6/01.]

**WAC 388-531-0200 Physician-related services requiring prior authorization.** (1) MAA requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 388-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in MAA's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to MAA showing how the authorization number was created.

(c) Selected nonemergent admissions to contract hospitals require EPA. These are identified in MAA billing instructions.

(d) Procedures requiring expedited prior authorization include, but are not limited to, the following:

- (i) Bladder repair;
- (ii) Hysterectomy for clients age forty-five and younger, except with a diagnosis of cancer(s) of the female reproductive system;
- (iii) Outpatient magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA);
- (iv) Reduction mammoplasties/mastectomy for gynecomastia; and

(v) Strabismus surgery for clients eighteen years of age and older.

(3) MAA evaluates new technologies under the procedures in WAC 388-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

- (a) Abdominoplasty;
- (b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;
- (c) Cochlear implants, which also:
  - (i) For coverage, must be performed in an ambulatory surgery center (ASC) or an inpatient or outpatient hospital facility; and
  - (ii) For reimbursement, must have the invoice attached to the claim;
- (d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;
- (e) Osteopathic manipulative therapy in excess of MAA's published limits;
- (f) Panniculectomy;
- (g) Bariatric surgery (see WAC 388-531-1600); and
- (h) Vagus nerve stimulator insertion, which also:
  - (i) For coverage, must be performed in an inpatient or outpatient hospital facility; and
  - (ii) For reimbursement, must have the invoice attached to the claim.

(5) MAA may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(6) Children six year of age and younger do not require authorization for hospitalization.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-12-022, § 388-531-0200, filed 5/20/05, effective 6/20/05; 01-01-012, § 388-531-0200, filed 12/6/00, effective 1/6/01.]

**WAC 388-531-0250 Who can provide and bill for physician-related services.** (1) The following enrolled providers are eligible to provide and bill for physician-related medical services which they provide to eligible clients:

- (a) Advanced registered nurse practitioners (ARNP);
  - (b) Federally qualified health centers (FQHCs);
  - (c) Health departments;
  - (d) Hospitals currently licensed by the department of health;
  - (e) Independent (outside) laboratories **CLIA** certified to perform tests. See WAC 388-531-0800;
  - (f) Licensed radiology facilities;
  - (g) Medicare-certified ambulatory surgery centers;
  - (h) Medicare-certified rural health clinics;
  - (i) Providers who have a signed agreement with MAA to provide screening services to eligible persons in the EPSDT program;
  - (j) Registered nurse first assistants (RNFA); and
  - (k) Persons currently licensed by the state of Washington department of health to practice any of the following:
    - (i) Dentistry (refer to chapter 388-535 WAC);
    - (ii) Medicine and osteopathy;
    - (iii) Nursing;
    - (iv) Optometry; or
    - (v) Podiatry.
- (2) MAA does not reimburse for services performed by any of the following practitioners:

- (a) Acupuncturists;
  - (b) Christian Science practitioners or theological healers;
  - (c) Counselors;
  - (d) Herbalists;
  - (e) Homeopaths;
  - (f) Massage therapists as licensed by the Washington state department of health;
  - (g) Naturopaths;
  - (h) Sanipractors;
  - (i) Those who have a master's degree in social work (MSW), except those employed by an FQHC or who have prior authorization to evaluate a client for bariatric surgery;
  - (j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC 388-502-0010; or
  - (k) Any other licensed practitioners providing services which the practitioner is not:
    - (i) Licensed to provide; and
    - (ii) Trained to provide.
- (3) MAA reimburses practitioners listed in subsection (2) of this section for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:
- (a) The EPSDT program;
  - (b) A Medicaid program for qualified Medicare beneficiaries (QMB); or
  - (c) A waiver program.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-12-022, § 388-531-0250, filed 5/20/05, effective 6/20/05; 01-01-012, § 388-531-0250, filed 12/6/00, effective 1/6/01.]

**WAC 388-531-0650 Hospital physician-related services not requiring authorization when provided in MAA-approved centers of excellence or hospitals authorized to provide the specific services.** MAA covers the following services without prior authorization when provided in MAA-approved centers of excellence. MAA issues periodic publications listing centers of excellence. These services include the following:

- (1) All transplant procedures specified in WAC 388-550-1900;
- (2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC 388-550-2400. See also WAC 388-531-0700;
- (3) Sleep studies including but not limited to polysomnograms for clients one year of age and older. MAA allows sleep studies only in outpatient hospital settings as described under WAC 388-550-6350. See also WAC 388-531-1500; and
- (4) Diabetes education, in a DOH-approved facility, per WAC 388-550-6300.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-12-022, § 388-531-0650, filed 5/20/05, effective 6/20/05; 01-01-012, § 388-531-0650, filed 12/6/00, effective 1/6/01.]

**WAC 388-531-1600 Bariatric surgery.** (1) The medical assistance administration (MAA) covers medically necessary bariatric surgery for eligible clients.

(2) Bariatric surgery must be performed in a hospital with a bariatric surgery program, and the hospital must be:

- (a) Located in the state of Washington or approved border cities (see WAC 388-501-0175); and
  - (b) Meet the requirements of WAC 388-550-2301.
- (3) If bariatric surgery is requested or prescribed under the EPSDT program, MAA evaluates it as a covered service under EPSDT's standard of coverage that requires the service to be:
- (a) Medically necessary;
  - (b) Safe and effective; and
  - (c) Not experimental.
- (4) MAA authorizes payment for bariatric surgery and bariatric surgery-related services in three stages:
- (a) Stage one—Initial assessment of client;
  - (b) Stage two—Evaluations for bariatric surgery and successful completion of a weight loss regimen; and
  - (c) Stage three—Bariatric surgery.

**Stage one—Initial assessment**

(5) Any MAA provider who is licensed to practice medicine in the state of Washington may examine a client requesting bariatric surgery to ascertain if the client meets the criteria listed in subsection (6) of this section.

(6) The client meets the preliminary conditions of stage one when:

- (a) The client is between twenty-one and fifty-nine years of age;
- (b) The client has a body mass index (BMI) of thirty-five or greater;
- (c) The client is not pregnant. (Pregnancy within the first two years following bariatric surgery is not recommended. When applicable, a family planning consultation is highly recommended prior to bariatric surgery.);
- (d) The client is diagnosed with one of the following:
  - (i) Diabetes mellitus;
  - (ii) Degenerative joint disease of a major weight bearing joint(s) (the client must be a candidate for joint replacement surgery if weight loss is achieved); or
  - (iii) Other rare comorbid conditions (such as pseudo tumor cerebri) in which there is medical evidence that bariatric surgery is medically necessary and that the benefits of bariatric surgery outweigh the risk of surgical mortality; and
- (e) The client has an absence of other medical conditions such as multiple sclerosis (MS) that would increase the client's risk of surgical mortality or morbidity from bariatric surgery.

(7) If a client meets the criteria in subsection (6) of this section, the provider must request prior authorization from MAA before referring the client to stage two of the bariatric surgery authorization process. The provider must attach a medical report to the request for prior authorization with supporting documentation that the client meets the stage one criteria in subsections (5) and (6) of this section.

(8) MAA evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

**Stage two—Evaluations for bariatric surgery and successful completion of a weight loss regimen**

(9) After receiving prior authorization from MAA to begin stage two of the bariatric surgery authorization process, the client must:

(a) Undergo a comprehensive psychosocial evaluation performed by a psychiatrist, licensed psychiatric ARNP, or licensed independent social worker with a minimum of two years postmasters' experience in a mental health setting. Upon completion, the results of the evaluation must be forwarded to MAA. The comprehensive psychosocial evaluation must include:

(i) An assessment of the client's mental status or illness to:

(A) Evaluate the client for the presence of substance abuse problems or psychiatric illness which would preclude the client from participating in presurgical dietary requirements or postsurgical lifestyle changes; and

(B) If applicable, document that the client has been successfully treated for psychiatric illness and has been stabilized for at least six months and/or has been rehabilitated and is free from any drug and/or alcohol abuse and has been drug and/or alcohol free for a period of at least one year.

(ii) An assessment and certification of the client's ability to comply with the postoperative requirements such as life-long required dietary changes and regular follow-up.

(b) Undergo an internal medicine evaluation performed by an internist to assess the client's preoperative condition and mortality risk. Upon completion, the internist must forward the results of the evaluation to MAA.

(c) Undergo a surgical evaluation by the surgeon who will perform the bariatric surgery (see subsection (13) of this section for surgeon requirements). Upon completion, the surgeon must forward the results of the surgical evaluation to MAA and to the licensed medical provider who is supervising the client's weight loss regimen (refer to WAC 388-531-1600 (9)(d)(ii)).

(d) Under the supervision of a licensed medical provider, the client must participate in a weight loss regimen prior to surgery. The client must, within one hundred and eighty days from the date of MAA's stage one authorization, lose at least five percent of his or her initial body weight. If the client does not meet this weight loss requirement within one hundred and eighty days from the date of MAA's initial authorization, MAA will cancel the authorization. The client or the client's provider must reapply for prior authorization from MAA to restart stage two. For the purpose of this section, "initial body weight" means the client's weight at the first evaluation appointment.

(i) The purpose of the weight loss regimen is to help the client achieve the required five percent loss of initial body weight prior to surgery and to demonstrate the client's ability to adhere to the radical and lifelong behavior changes and strict diet that are required after bariatric surgery.

(ii) The weight loss regimen must:

(A) Be supervised by a licensed medical provider who has a core provider agreement with MAA;

(B) Include monthly visits to the medical provider;

(C) Include counseling twice a month by a registered dietician referred to by the treating provider or surgeon; and

(D) Be at least six months in duration.

(iii) Documentation of the following requirements must be retained in the client's medical file. Copies of the documentation must be forwarded to MAA upon completion of stage two. MAA will evaluate the documentation and autho-

rize the client for bariatric surgery if the stage two requirements were successfully completed.

(A) The provider must document the client's compliance in keeping scheduled appointments and the client's progress toward weight loss by serial weight recordings. Clients must lose at least five percent loss of initial body weight and must maintain the five percent weight loss until surgery;

(B) For diabetic clients, the provider must document the efforts in diabetic control or stabilization;

(C) The registered dietician must document the client's compliance (or noncompliance) in keeping scheduled appointments, and the client's weight loss progress;

(D) The client must keep a journal of active participation in the medically structured weight loss regimen including the activities under (d)(iii)(A), (d)(iii)(B) if appropriate, and (d)(iii)(C) of this subsection.

(10) If the client fails to complete all of the requirements of subsection (9) of this section, MAA will not authorize stage three—Bariatric surgery.

(11) If the client is unable to meet all of the stage two criteria, the client or the client's provider must reapply for prior authorization from MAA to re-enter stage two.

#### **Stage three—Bariatric surgery**

(12) MAA may withdraw authorization of payment for bariatric surgery at any time up to the actual surgery if MAA determines that the client is not complying with the requirements of this section.

(13) A surgeon who performs bariatric surgery for medical assistance clients must:

(a) Have a signed core provider agreement with MAA;

(b) Have a valid medical license in the state of Washington; and

(c) Be affiliated with a bariatric surgery program that meets the requirements of WAC 388-550-2301.

(14) For hospital requirements for stage three—Bariatric surgery, see WAC 388-530-2301.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-12-022, § 388-531-1600, filed 5/20/05, effective 6/20/05; 01-01-012, § 388-531-1600, filed 12/6/00, effective 1/6/01.]

**WAC 388-531-2000 Increased payments for physician-related services for qualified trauma cases.** (1) The department's trauma care fund (TCF) is an amount that is legislatively appropriated to DSHS each biennium for the purpose of increasing the department's payment to eligible physicians and other clinical providers for providing qualified trauma services to Medicaid, general assistance-unemployable (GA-U), and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) fee-for-service clients. Claims for trauma care provided to clients enrolled in the department's managed care programs are not eligible for increased payments from the TCF.

(2) Beginning with services provided after June 30, 2003, the department makes increased payments from the TCF to physicians and other clinical providers who provide trauma services to Medicaid, GA-U, and ADATSA clients, subject to the provisions in this section. A provider is eligible to receive increased payments from the TCF for trauma services provided to a GA-U or ADATSA client during the client's certification period only. See WAC 388-416-0010.

(3) The department makes increased payments from the TCF to physicians and other clinical providers who:

(a) Are on the designated trauma services response team of any department of health (DOH)-designated trauma service center;

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC; and

(d) Submit all information the department requires to ensure trauma services are being provided.

(4) Except as described in subsection (5) of this section and subject to the limitations listed, the department makes increased payments from the TCF to physicians and other eligible clinical providers:

(a) For only those trauma services that are designated by the department as "qualified." These qualified services must be provided to eligible fee-for-service Medicaid, GA-U, and ADATSA clients. Qualified trauma services include care provided within six months of the date of injury for surgical procedures related to the injury if the surgical procedures were planned during the initial acute episode of injury.

(b) For hospital-based services only.

(c) Only for trauma cases that meet the injury severity score (ISS) (a summary rating system for traumatic anatomic injuries) of:

(i) Thirteen or greater for an adult trauma patient (a client age fifteen or older); or

(ii) Nine or greater for a pediatric trauma patient (a client younger than age fifteen).

(d) On a per-client basis in any DOH designated trauma service center.

(e) At a rate of two and one-half times the current department fee-for-service rate for qualified trauma services, subject to the following:

(i) The department monitors the increased payments from the TCF during each state fiscal year (SFY) and makes necessary adjustments to the rate to ensure that total payments from the TCF for the biennium will not exceed the legislative appropriation for that biennium.

(ii) Laboratory and pathology charges are not eligible for increased payments from the TCF. (See subsection (6)(b) of this section.)

(5) When a trauma case is transferred from one hospital to another, the department makes increased payments from the TCF to physicians and other eligible clinical providers, according to the ISS score as follows:

(a) If the transferred case meets or exceeds the appropriate ISS threshold described in subsection (4)(c) of this section, eligible providers who furnish qualified trauma services in both the transferring and receiving hospitals are eligible for increased payments from the TCF.

(b) If the transferred case is below the ISS threshold described in subsection (4)(c) of this section, only the eligible providers who furnish qualified trauma services in the receiving hospital are eligible for increased payments from the TCF.

(6) The department distributes increased payments from the TCF only:

(a) When eligible trauma claims are submitted with the appropriate trauma indicator within the time frames specified by the department; and

(b) On a per-claim basis. Each qualifying trauma service and/or procedure on the physician's claim or other clinical provider's claim is paid at the department's current fee-for-service rate, multiplied by an increased TCF payment rate that is based on the appropriate rate described in subsection (4)(e) of this section. Charges for laboratory and pathology services and/or procedures are not eligible for increased payments from the TCF and are paid at the department's current fee-for-service rate.

(7) For purposes of the increased payments from the TCF to physicians and other eligible clinical providers, all of the following apply:

(a) The department may consider a request for a claim adjustment submitted by a provider only if the claim is received by the department within one year from the date of the initial trauma service;

(b) The department does not allow any carryover of liabilities for an increased payment from the TCF after a date specified by the department as the last date to make adjustments to a trauma claim for an SFY. WAC 388-502-0150(7) does not apply in this case;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of increased payments from the TCF disbursed to providers by the department in a biennium cannot exceed the amount appropriated by the legislature for that biennium. The department has the authority to take whatever actions are needed to ensure the department stays within the current TCF appropriation (see subsection (4)(e)(i) of this section).

[Statutory Authority: RCW 74.08.090, 74.09.500, 05-20-050, § 388-531-2000, filed 9/30/05, effective 10/31/05; 04-19-113, § 388-531-2000, filed 9/21/04, effective 10/22/04.]

## Chapter 388-532 WAC

### REPRODUCTIVE HEALTH/FAMILY PLANNING ONLY/TAKE CHARGE

#### WAC

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**WAC 388-532-001 Reproductive health services—**

**Purpose.** The department of social and health services (DSHS) defines reproductive health services as those services that:

- (1) Assist clients to avoid illness, disease, and disability related to reproductive health;
- (2) Provide related and appropriate, medically necessary care when needed; and
- (3) Assist clients to make informed decisions about using medically safe and effective methods of family planning.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-001, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-001, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-050 Reproductive health services—**

**Definitions.** The following definitions and those found in WAC 388-500-005, Medical definitions, apply to this chapter.

**"Complication"**—A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

**"Contraception"**—Preventing pregnancy through the use of contraceptives.

**"Contraceptive"**—A device, drug, product, method, or surgical intervention used to prevent pregnancy.

**"Department"**—The department of social and health services.

**"Department-approved family planning provider"—**

A physician, advanced registered nurse practitioner (ARNP), or clinic that has:

- Agreed to the requirements of WAC 388-532-110;
- Signed a core provider agreement with the department;
- Assigned a unique family planning provider number by the department; and
- Signed a special agreement that allows the provider to bill for family planning laboratory services provided to clients enrolled in a department-managed care plan through an independent laboratory certified through the Clinical Laboratory Improvements Act (CLIA).

**"Family planning services"**—Medically safe and effective medical care, educational services, and/or contraceptives that enable individuals to plan and space the number of children and avoid unintended pregnancies.

**"Medical identification card"**—The document the department uses to identify a client's eligibility for a medical program.

**"Natural family planning"**—Also known as fertility awareness method, means methods such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle to identify the fertile days of the menstrual cycle and avoid unintended pregnancies.

**"Over-the-counter (OTC)"**—See WAC 388-530-1050 for definition.

**"Sexually transmitted disease infection (STD-I)"**—Is a disease or infection acquired as a result of sexual contact.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-050, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-050, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-

021, § 388-532-050, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800. 00-14-066, § 388-532-050, filed 7/5/00, effective 8/5/00.]

**WAC 388-532-100 Reproductive health services—**

**Client eligibility.** (1) The department covers limited reproductive health services for clients eligible for the following medical assistance programs:

- (a) Children's health insurance program (CHIP);
- (b) Categorically needy program (CNP);
- (c) General assistance unemployable (GAU);
- (d) Limited casualty program-medically needy program (LCP-MNP); and
- (e) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(2) Clients enrolled in a department managed care plan may self-refer outside their plan for family planning services (excluding sterilizations for clients twenty-one years of age or older), abortions, and STD-I services to any of the following:

- (a) A department-approved family planning provider;
- (b) A department-contracted local health department/STD-I clinic; or
- (c) A department-contracted pharmacy for:
  - (i) Over-the-counter contraceptive supplies;
  - (ii) Contraceptives and STD-I related prescriptions from a department-approved family planning provider or department-contracted local health department/STD-I clinic.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-100, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-100, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-100, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800. 00-14-066, § 388-532-100, filed 7/5/00, effective 8/5/00.]

**WAC 388-532-110 Reproductive health services—**

**Provider requirements.** To be reimbursed by the department for reproductive health services provided to eligible clients, physicians, ARNPs, licensed midwives, and department-approved family planning providers must:

- (1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules;
- (2) Provide only those services that are within the scope of their licenses;
- (3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter (OTC) birth control supplies and related medical services;
- (4) Provide medical services related to FDA-approved prescription birth control methods and OTC birth control supplies upon request;
- (5) Supply or prescribe FDA-approved prescription birth control methods and OTC birth control supplies upon request; and
- (6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-110, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-110, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-120 Reproductive health—Covered services.** In addition to those services listed in WAC 388-531-0100 Physician's related services, the department covers the following reproductive health services:

(1) **Services for women**

(a) Cervical, vaginal, and breast cancer screening examination once per year as medically necessary.

(b) Food and Drug Administration (FDA) approved prescription contraception methods as identified in chapter 388-530 WAC, Pharmacy services.

(c) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(d) Sterilization procedures that meet the requirements of WAC 388-531-1550, if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

(e) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

(f) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(g) Mammograms for clients forty years of age and older, once per year;

(h) Colposcopy and related medically necessary follow-up services;

(i) Maternity-related services as described in chapter 388-533 WAC; and

(j) Abortion.

(2) **Services for men**

(a) Office visits where the primary focus and diagnosis is contraceptive management and/or there is a medical concern;

(b) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(c) Sterilization procedures that meet the requirements of WAC 388-531-1550(1), if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

(d) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

(e) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(f) Prostate cancer screenings for men who are fifty years of age and older, once per year.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-120, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-120, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-130 Reproductive health—Noncovered services.** Noncovered reproductive health services are the same as shown in WAC 388-531-0150, Noncovered physician-related services—General and administrative.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-130, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-130, filed 2/6/04, effective 3/8/04.]

[2006 WAC Supp—page 1644]

**WAC 388-532-140 Reproductive health services—Reimbursement and payment limitations.** (1) The department reimburses providers for covered reproductive health services using the department's published fee schedules.

(2) When a client enrolled in a department-approved managed care plan self-refers outside the plan to either a department-approved family planning provider or a department-contracted local health department STD-I clinic for family planning or STD-I services, all laboratory services must be billed through the family planning provider.

(3) When a client enrolled in a department managed care plan obtains family planning or STD-I services from a department-approved family planning provider or a department-contracted local health department/STD-I clinic which has a contract with the managed care plan, those services must be billed directly to the managed care plan.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-140, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-140, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-500 Family planning only program—**

**Purpose.** The purpose of the family planning only program is to provide family planning services at the end of a pregnancy to women who received medical assistance benefits during their pregnancy. The primary goal of the family planning only program is to prevent an unintended, subsequent pregnancy. Women receive this benefit automatically regardless of how or when the pregnancy ends. This ten-month benefit follows the department's sixty-day postpregnancy coverage. Men are not eligible for the family planning only program.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-500, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-500, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-505 Family planning only program—**

**Definitions.** The following definition and those found in WAC 388-500-005, Medical definitions and WAC 388-532-050, apply to the family planning only program.

**"Family planning only program"**—The program that provides an additional ten months of family planning services to eligible women who have just ended a pregnancy or completed a delivery. This benefit follows the sixty-day postpregnancy coverage for women who received medical assistance benefits during the pregnancy. This program's coverage is strictly limited to family planning services.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-505, filed 11/30/05, effective 12/31/05.]

**WAC 388-532-510 Family planning only program—**

**Client eligibility.** A woman is eligible for family planning only services if:

(1) She received medical assistance benefits during her pregnancy; or

(2) She is determined eligible for a retroactive period as defined in WAC 388-500-0005 covering the end of the pregnancy.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-510, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-510, filed 2/6/04, effective 3/8/04.]



**WAC 388-532-520 Family planning only program—Provider requirements.** To be reimbursed by the department for services provided to clients eligible for the family planning only program, physicians, ARNPs, and/or department-approved family planning providers must:

(1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules;

(2) Provide only those services that are within the scope of their licenses;

(3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter birth control supplies and related medical services;

(4) Provide medical services related to FDA-approved prescription birth control methods and over-the-counter birth control supplies upon request;

(5) Supply or prescribe FDA-approved prescription birth control methods and over-the-counter birth control supplies upon request; and

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-520, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-520, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-530 Family planning only program—Covered services.** The department covers the following services under the family planning only program:

(1) Gynecological examination that may include a cervical and vaginal cancer screening examination, one per year when it is:

(a) Provided according to the current standard of care; and

(b) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.

(2) Food and Drug Administration (FDA) approved prescription contraception methods meeting the requirements of chapter 388-530 WAC, Pharmacy services.

(3) Over-the-counter (OTC) contraceptive, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(4) Sterilization procedure that meets the requirements of WAC 388-531-1550, if it is:

(a) Requested by the client; and

(b) Performed in an appropriate setting for the procedure.

(5) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory test and procedures only when the screening and treatment is:

(a) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

(b) Medically necessary for the client to safely, effectively, and successfully use, or to continue to use, her chosen contraceptive method.

(6) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-530, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-530, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-540 Family planning only program—Noncovered services.** Medical services are not covered under the family planning only program unless those services are:

(1) Performed in relation to a primary focus and diagnosis of family planning; and

(2) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, her chosen contraceptive method.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-540, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-540, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-550 Family planning only program—Reimbursement and payment limitations.** (1) The department limits reimbursement under the family planning only program to visits and services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and

(b) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, her chosen contraceptive method.

(2) The department reimburses providers for covered family planning only services using the department's published fee schedules.

(3) The department does not cover inpatient services under the family planning only program. However, inpatient charges may be incurred as a result of complications arising directly from a covered family planning service. If this happens, providers of family planning-related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for the inpatient services.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-550, filed 11/30/05, effective 12/31/05; 04-05-011, § 388-532-550, filed 2/6/04, effective 3/8/04.]

**WAC 388-532-700 TAKE CHARGE program—Purpose.** TAKE CHARGE is a five-year family planning demonstration and research program. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred percent of the federal poverty level. TAKE CHARGE is approved by the federal government under a Medicaid program waiver and runs from July 1, 2001, through June 30, 2006 (unless terminated or extended prior to June 30, 2006). See WAC 388-532-710 for a definition of TAKE CHARGE.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-700, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-700, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-710 TAKE CHARGE program—Definitions.** The following definitions and those found in WAC 388-500-0005 medical definitions and WAC 388-532-050 apply to the medical assistance administration's (MAA's) TAKE CHARGE program.

**"Ancillary services"**—Those family planning services provided to TAKE CHARGE clients by MAA's contracted pro-

viders who are not TAKE CHARGE providers. These services include, but are not limited to, family planning pharmacy services, family planning laboratory services and sterilization surgical services.

**"Application assistance"**—The process a TAKE CHARGE provider follows in helping a client to complete and submit an application to MAA for the TAKE CHARGE program.

**"Education, counseling and risk reduction intervention" or "ECRR"**—A stand alone department-designated service, specifically intended for clients at higher risk of contraceptive failure, that strengthen a client's decision-making skills to make the best choice of contraceptive method and reduce the risk of unintended pregnancy. ECRR services must include:

(1) Helping the client critically evaluate which contraceptive method is most acceptable and can be used most effectively by her/him.

(2) Assessing and addressing other client personal considerations, risk factors (including sexually transmitted infections), and behaviors that impact her/his use of contraception.

(3) Facilitating a discussion of the male role in successful use of chosen contraceptive method, as appropriate.

(4) Facilitating contingency planning (the back-up method) regarding the chosen contraceptive method, including planning for emergency contraception.

(5) Scheduling a follow-up appointment as medically necessary for birth control evaluation for the safe, effective and successful use of the client's chosen contraceptive method and to reinforce positive contraceptive and other self protective behaviors.

(6) If no contraceptive method is chosen, discussing the likelihood of a pregnancy and helping the client assess his/her emotional, physical, and financial readiness for pregnancy and/or parenting.

**"Intensive follow-up services" or "IFS"**—Those supplemental services specified in some TAKE CHARGE provider contracts that support clients in the successful use of contraceptive methods. Department-selected TAKE CHARGE providers perform IFS as part of the research component of the TAKE CHARGE program (see WAC 388-532-730 (1)(f)).

**"TAKE CHARGE"**—The department's five-year demonstration and research program approved by the federal government under a Medicaid program waiver to provide family planning services.

**"TAKE CHARGE provider"**—A provider who is approved by the department to participate in TAKE CHARGE by:

(1) Being a department-approved family planning provider; and

(2) Having a supplemental TAKE CHARGE agreement to provide TAKE CHARGE family planning services to eligible clients under the terms of the federally approved Medicaid waiver for the TAKE CHARGE program.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-710, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-710, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-720 TAKE CHARGE program—Eligibility.** (1) The TAKE CHARGE program is for men and women.

To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred percent of the federal poverty level as described in WAC 388-478-0075;

(d) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(e) Need family planning services but have:

(i) No family planning coverage through another medical assistance program; or

(ii) Family planning coverage that does not cover one hundred percent of the applicant's chosen birth control.

(2) A client who is currently pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-720, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 04-15-057, § 388-532-720, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-720, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-730 TAKE CHARGE program—Provider requirements.** (1) A TAKE CHARGE provider must:

(a) Be a department-approved family planning provider as described in WAC 388-532-050;

(b) Sign the supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE demonstration and research program according to the department's TAKE CHARGE program guidelines;

(c) Participate in the department's specialized training for the TAKE CHARGE demonstration and research program prior to providing TAKE CHARGE services. Providers must assure that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program;

(d) Comply with the required general department and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in the department's billing instructions and provide referral information to clients regarding available and affordable nonfamily planning primary care services; and

(e) If requested by the department, participate in the research and evaluation component of the TAKE CHARGE demonstration and research program. If selected by the department for the research and evaluation component, the provider must accept assignment to either:

(i) A randomly selected group of providers that give intensive follow-up service (IFS) to TAKE CHARGE clients under a TAKE CHARGE research component client services

contract. See WAC 388-532-740(2) for a related limitation; or

(ii) A randomly selected control group of providers subject to a TAKE CHARGE research component client services contract.

(2) Department providers (e.g., pharmacies, laboratories, surgeons performing sterilization procedures) who are not TAKE CHARGE providers may furnish family planning ancillary services, as defined in this chapter, to eligible TAKE CHARGE clients. The department reimburses for these services under the rules and fee schedules applicable to the specific services provided under the department's other programs.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-730, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-730, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-740 TAKE CHARGE program—Covered services.** (1) The department covers the following TAKE CHARGE services for men and women:

(a) One session of application assistance per client, per year;

(b) Food and Drug Administration (FDA) approved prescription and nonprescription contraceptives as provided in chapter 388-530 WAC;

(c) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter 388-538, Pharmacy services);

(d) Gynecological examination that may include a cervical and vaginal cancer screening exam, one per year when it is:

(i) Provided according to the current standard of care; and

(ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.

(e) Education, counseling, and risk reduction (ECRR) intervention, specifically intended for clients at higher risk of contraceptive failure, that have identified or demonstrated risks of unintended pregnancy. MAA limits ECRR as follows:

(i) For women at risk of unintended pregnancy, limited to one ECRR service every ten months;

(ii) For men whose sexual partner is at risk of unintended pregnancy, limited to one ECRR service every twelve months;

(iii) Must be a minimum of thirty minutes in duration;

(iv) Must be appropriate and individualized to the client's needs, age, language, cultural background, risk behaviors, sexual orientation, and psychosocial history;

(v) Must be provided by one of the following TAKE CHARGE trained providers:

(A) An advanced registered nurse practitioner (ARNP);

(B) Registered nurse (RN), licensed practical nurse (LPN);

(C) Physician or physician's assistant (PA); or

(D) A trained and experienced health educator or medical assistant when used for assisting and augmenting the above listed clinicians.

(vi) Must be documented in the client's chart with detailed information that would allow for a well-informed follow-up visit;

(vii) A client who does not have identified or demonstrated risks of unintended pregnancy and who is not at increased risk of contraceptive failure is not eligible for ECRR.

(f) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(i) Requested by the TAKE CHARGE client; and

(ii) Performed in an appropriate setting for the procedure.

(g) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is:

(i) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

(ii) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(h) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(2) The department covers intensive follow-up services (IFS) for certain clients as part of the research component of the TAKE CHARGE demonstration and research program. Only those clients served by the department's randomly selected research sites receive IFS (see WAC 388-532-730 (1)(e)(i)). The specific elements of IFS are negotiated with each research site.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-740, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-740, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-750 TAKE CHARGE program—Non-covered services.** The department does not cover medical services under the TAKE CHARGE program unless those services are:

(1) Performed in relation to a primary focus and diagnosis of family planning; and

(2) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-750, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-750, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-760 TAKE CHARGE program—Documentation requirements.** In addition to the documentation requirements in WAC 388-502-0020, TAKE CHARGE providers must keep the following records:

(1) TAKE CHARGE preapplication worksheet form(s) and application(s);

(2) Signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;

(3) Documentation of the department's specialized TAKE CHARGE training and/or in-house in-service TAKE CHARGE training for each individual responsible for providing TAKE CHARGE.

- (4) Chart notes that reflect the primary focus and diagnosis of the visit was family planning;
- (5) Contraceptive methods discussed with the client;
- (6) Notes on any discussions of emergency contraception and needed prescription(s);
- (7) The client's plan for the contraceptive method to be used, or the reason for no contraceptive method and plan;
- (8) Documentation of the education, counseling and risk reduction (ECRR) service, if provided, including all of the required components as defined in WAC 388-532-710 with sufficient detail that allows for follow-up;
- (9) Documentation of referrals to or from other providers;
- (10) A form signed by the client authorizing release of information for referral purposes, as necessary; and
- (11) If applicable, a copy of the completed DSHS sterilization consent form [DSHS 13-364 - available for download at <http://www.dshs.wa.gov/msa/forms/eforms.html>] (see WAC 388-531-1550).

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-760, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-760, filed 10/8/02, effective 11/8/02.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**WAC 388-532-780 TAKE CHARGE program—Reimbursement and payment limitations.** (1) The department limits reimbursement under the TAKE CHARGE program to those services that:

- (a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and
- (b) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(2) The department reimburses providers for covered TAKE CHARGE services according to the department's published TAKE CHARGE fee schedule.

(3)(3) The department limits reimbursement for TAKE CHARGE intensive follow-up services (IFS) to those randomly selected research sites described in WAC 388-532-740(2). See WAC 388-532-730 (1)(e)(i) for related information.

(4) Federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health providers who choose to become TAKE CHARGE providers must bill the department for TAKE CHARGE services without regard to their special rates and fee schedules. The department does not reimburse FQHCs, RHCs or Indian health providers under the encounter rate structure for TAKE CHARGE services.

(5) The department requires TAKE CHARGE providers to meet the billing requirements of WAC 388-502-0150 (billing time limits). In addition, all final billings and billing adjustments related to the TAKE CHARGE program must be completed no later than June 30, 2008, or no later than two years after the demonstration and research program terminates, whichever occurs first. The department will not accept new billings or billing adjustments that increase expenditures for the TAKE CHARGE program after the cut-off date in this subsection.

(6) The department does not cover inpatient services under the TAKE CHARGE program. However, inpatient charges may be incurred as a result of complications arising directly from a covered TAKE CHARGE service. If this happens, providers of TAKE CHARGE related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for inpatient services for the department to consider payment under WAC 388-501-0165.

(7) The department requires a provider under WAC 388-501-0200 to seek timely reimbursement from a third party when a client has available third party resources. The exceptions to this requirement are described under WAC 388-501-0200 (2) and (3) and 388-532-790.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-780, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-780, filed 10/8/02, effective 11/8/02.]

**WAC 388-532-790 TAKE CHARGE program—Good cause exemption from billing third party insurance.** (1) TAKE CHARGE applicants who are either adolescents or young adults and who depend on their parents' medical insurance, or individuals who are domestic violence victims may request an exemption of available third party family planning coverage due to "good cause." Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her privacy because the third party:

(a) Routinely or randomly sends verification of services to the third party subscriber and that subscriber is other than the applicant; and/or

(b) Requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to another party.

(2) If subsection (1)(a) or (1)(b) of this section applies, the applicant is considered for TAKE CHARGE without regard to the available third party family planning coverage.

[Statutory Authority: RCW 74.08.090, 74.09.520, and 74.09.800. 05-24-032, § 388-532-790, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.800, and SSB 5968, 1999 c 392 § 2(12). 02-21-021, § 388-532-790, filed 10/8/02, effective 11/8/02.]

## Chapter 388-533 WAC MATERNITY-RELATED SERVICES

### WAC

388-533-0710	Chemical-using pregnant (CUP) women program—Client eligibility.
388-533-0720	Chemical-using pregnant (CUP) women program—Provider requirements.
388-533-0730	Chemical-using pregnant (CUP) women program—Covered services.

**WAC 388-533-0710 Chemical-using pregnant (CUP) women program—Client eligibility.** (1) To be eligible for the chemical-using pregnant (CUP) women program, a woman must meet all of the following conditions:

(a) Be pregnant; and

(b) Be eligible for Medicaid.

(2) Clients meeting the eligibility criteria in WAC 388-533-0710(1) who are enrolled in an MAA managed care plan are eligible for CUP services outside their plan, except Wash-

ington Medicaid integration partnership clients. CUP services delivered outside the managed care plan are reimbursed and subject to the same program rules as apply to nonmanaged care clients.

(3) Clients receiving three-day or five-day detoxification services through the department are not eligible for the CUP women program.

[Statutory Authority: RCW 74.08.090 and 74.09.800. 05-08-061, § 388-533-0710, filed 3/31/05, effective 5/1/05; 04-11-008, § 388-533-710 (codified as WAC 388-533-0710), filed 5/5/04, effective 6/5/04.]

**WAC 388-533-0720 Chemical-using pregnant (CUP) women program—Provider requirements.** (1) The medical assistance administration (MAA) pays only those providers who:

(a) Have been approved by MAA to provide chemical-using pregnant (CUP) women program services;

(b) Have been certified as chemical dependency service providers by the division of alcohol and substance abuse (DASA) as prescribed in chapter 388-805 WAC;

(c) Meet the hospital standards prescribed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(d) Meet the general provider requirements in chapter 388-502 WAC; and

(e) Are not licensed as an institution for mental disease (IMD) under Centers for Medicare and Medicaid (CMS) criteria.

(2) CUP women program service providers are required to:

(a) Report any changes in their certification, level of care, or program operations to the MAA CUP women program manager;

(b) Have written policies and procedures that include a working statement describing the purpose and methods of treatment for chemical-using/abusing pregnant women;

(c) Provide guidelines and resources for current medical treatment methods by specific drug and/or alcohol type;

(d) Have linkages with state and community providers to ensure a working knowledge exists of current medical and substance abuse resources; and

(e) Ensure that a chemical dependency assessment of the client has been completed:

(i) By a chemical dependency professional as defined in chapter 246-811 WAC;

(ii) Using the latest criteria of the American Society of Addiction Medicine (ASAM); and

(iii) No earlier than six months before, and no later than five days after, the client's admission to the CUP women program.

[Statutory Authority: RCW 74.08.090 and 74.09.800. 05-08-061, § 388-533-0720, filed 3/31/05, effective 5/1/05; 04-11-008, § 388-533-720 (codified as WAC 388-533-0720), filed 5/5/04, effective 6/5/04.]

**WAC 388-533-0730 Chemical-using pregnant (CUP) women program—Covered services.** (1) The medical assistance administration (MAA) pays for the following covered services for a pregnant client and her fetus under the chemical-using pregnant (CUP) women program:

(a) Primary acute detoxification/medical stabilization;

(b) Secondary subacute detoxification/medical stabilization; and

(c) Rehabilitation treatment and services as determined by the provider.

(2) The maximum length of treatment per inpatient stay that MAA will pay for is twenty-six days, unless additional days have been preauthorized by the MAA CUP women program manager.

(3) If a client's pregnancy ends before inpatient treatment is completed, a provider may continue the client's treatment through the twenty-sixth day.

[Statutory Authority: RCW 74.08.090 and 74.09.800. 05-08-061, § 388-533-0730, filed 3/31/05, effective 5/1/05; 04-11-008, § 388-533-730 (codified as WAC 388-533-0730), filed 5/5/04, effective 6/5/04.]

## Chapter 388-535 WAC DENTAL-RELATED SERVICES

### WAC

388-535-1070 Dental-related services provider information.

**WAC 388-535-1070 Dental-related services provider information.** (1) The following providers are eligible to enroll with the medical assistance administration (MAA) to furnish and bill for dental-related services provided to eligible clients:

(a) Persons currently licensed by the state of Washington to:

(i) Practice dentistry or specialties of dentistry.

(ii) Practice as dental hygienists.

(iii) Practice as denturists.

(iv) Practice anesthesia by:

(A) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as an anesthesiologist or dental anesthesiologist;

(B) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as a certified registered nurse anesthetist (CRNA) under WAC 246-817-180; or

(C) Providing conscious sedation with parenteral or multiple oral agents as a dentist, when the dentist has a conscious sedation permit issued by the department of health (DOH) that is current at the time the billed service(s) is provided; or

(D) Providing deep sedation or general anesthesia as a dentist when the dentist has a general anesthesia permit issued by DOH that is current at the time the billed service(s) is provided.

(v) Practice medicine and osteopathy for:

(A) Oral surgery procedures; or

(B) Providing fluoride varnish under EPSDT.

(b) Facilities that are:

(i) Hospitals currently licensed by the DOH;

(ii) Federally-qualified health centers (FQHCs);

(iii) Medicare-certified ambulatory surgical centers (ASCs);

(iv) Medicare-certified rural health clinics (RHCs); or

(v) Community health centers.

(c) Participating local health jurisdictions.

(d) Bordering city or out-of-state providers of dental-related services who are qualified in their states to provide these services.

(2) Subject to the restrictions and limitations in this section and other applicable WAC, MAA pays licensed providers participating in the MAA dental program for only those services that are within their scope of practice.

(3) For the dental specialty of oral and maxillofacial surgery:

(a) MAA requires a dentist to:

(i) Be currently entitled to such specialty designation (to perform oral and maxillofacial surgery) under WAC 246-817-420; and

(ii) Meet the following requirements in order to be reimbursed for oral and maxillofacial surgery:

(A) The dentist must have participated at least three years in a maxillofacial residency program; and

(B) The dentist must be board certified or designated as "board eligible" by the American Board of Oral and Maxillofacial Surgery.

(b) A dental provider who meets the requirements in (3)(a) of this section must bill claims using appropriate current dental terminology (CDT) codes or current procedural terminology (CPT) codes for services that are identified as covered in WAC and MAA's published billing instructions or numbered memoranda.

(4) See WAC 388-502-0020 for provider documentation and record retention requirements. MAA requires additional dental documentation under specific sections in this chapter and as required by chapter 246-817 WAC.

(5) See WAC 388-502-0100 and 388-502-0150 for provider billing and payment requirements. Enrolled dental providers who do not meet the conditions in (3)(a) of this section must bill all claims using only the CDT codes for services that are identified in WAC and MAA's published billing instructions or numbered memoranda. MAA does not reimburse for billed CPT codes when the dental provider does not meet the requirements in subsection (3)(a) of this section.

(6) See WAC 388-502-0160 for regulations concerning charges billed to clients.

(7) See WAC 388-502-0230 for provider review and appeal.

(8) See WAC 388-502-0240 for provider audits and the audit appeal process.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520, 05-06-092, § 388-535-1070, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191, 03-19-077, § 388-535-1070, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225, 02-13-074, § 388-535-1070, filed 6/14/02, effective 7/15/02.]

## Chapter 388-543 WAC

### DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES, PROSTHETICS, ORTHOTICS, MEDICAL SUPPLIES AND RELATED SERVICES

#### WAC

388-543-1100	Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services.
388-543-1150	Limits and limitation extensions.
388-543-2800	Reusable and disposable medical supplies.

#### WAC 388-543-1100 Scope of coverage and coverage limitations for DME and related supplies, prosthetics,

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**orthotics, medical supplies and related services.** The federal government deems **durable medical equipment (DME)** and related supplies, **prosthetics, orthotics, and medical supplies** as optional services under the **Medicaid** program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (**EPSDT**) program. The **department** may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(1) The medical assistance administration (MAA) covers DME and related supplies, prosthetics, orthotics, medical supplies, related services, repairs and labor charges when they are:

(a) Within the scope of an eligible client's medical care program (see chapter 388-529 WAC);

(b) Within accepted medical or physical medicine community standards of practice;

(c) Prior authorized as described in WAC 388-543-1600, 388-543-1800, and 388-543-1900;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC). Except for dual eligible Medicare/Medicaid clients, the prescription must:

(i) Be dated and signed by the prescriber;

(ii) Be less than six months in duration from the date the prescriber signs the prescription; and

(iii) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity;

(e) Billed to the department as the payor of last resort only. MAA does not pay first and then collect from Medicare and;

(f) **Medically necessary** as defined in WAC 388-500-0005. The provider or client must submit sufficient objective evidence to establish medical necessity. Information used to establish medical necessity includes, but is not limited to, the following:

(i) A physiological description of the client's disease, injury, impairment, or other ailment, and any changes in the client's condition written by the prescribing physician, ARNP, PAC, licensed prosthetist and/or orthotist, physical therapist, occupational therapist, or speech therapist; and/or

(ii) Video and/or photograph(s) of the client demonstrating the impairments as well and client's ability to use the requested equipment, when applicable.

(2) MAA evaluates a request for any equipment or devices that are listed as noncovered in WAC 388-543-1300 under the provisions of WAC 388-501-0165.

(3) MAA evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165 which relate to medical necessity.

(4) MAA evaluates requests for covered services in this chapter that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

(5) MAA does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related ser-

vices, and related repairs and labor charges under **fee-for-service (FFS)** when the client is any of the following:

- (a) An inpatient hospital client;
- (b) Eligible for both **Medicare** and Medicaid, and is staying in a **nursing facility** in lieu of hospitalization;
- (c) Terminally ill and receiving hospice care; or
- (d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(6) MAA covers medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, repairs, and labor charges listed in MAA's published issuances, including Washington Administrative Code (WAC), billing instructions, and numbered memoranda.

(7) An interested party may request MAA to include new equipment/supplies in the billing instructions by sending a written request plus all of the following:

- (a) Manufacturer's literature;
- (b) Manufacturer's pricing;
- (c) Clinical research/case studies (including FDA approval, if required); and
- (d) Any additional information the requester feels is important.

(8) MAA bases the decision to purchase or rent DME for a client, or to pay for repairs to client-owned equipment on medical necessity.

(9) MAA covers replacement batteries for purchased medically necessary DME equipment covered within this chapter.

(10) MAA covers the following categories of medical equipment and supplies only when they are medically necessary, prescribed by a physician, ARNP, or PAC, are within the scope of his or her practice as defined by state law, and are subject to the provisions of this chapter and related WACs:

- (a) Equipment and supplies prescribed in accordance with an approved plan of treatment under the home health program;
- (b) Wheelchairs and other DME;
- (c) Prosthetic/orthotic devices;
- (d) Surgical/ostomy appliances and urological supplies;
- (e) Bandages, dressings, and tapes;
- (f) Equipment and supplies for the management of diabetes; and
- (g) Other medical equipment and supplies, as listed in MAA published issuances.

(11) MAA evaluates a **BR** item, procedure, or service for its medical appropriateness and reimbursement value on a case-by-case basis.

(12) For a client in a **nursing facility**, MAA covers only the following when medically necessary. All other DME and supplies identified in MAA billing instructions are the responsibility of the nursing facility, in accordance with chapters 388-96 and 388-97 WAC. See also WAC 388-543-2900 (3) and (4). MAA covers:

- (a) The purchase and repair of a speech generating device (SGD), a wheelchair for the exclusive full-time use of a permanently disabled nursing facility resident when the wheelchair is not included in the nursing facility's per diem rate, or a **specialty bed**; and
- (b) The rental of a specialty bed.

(13) Vendors must provide instructions for use of equipment; therefore, instructional materials such as pamphlets and video tapes are not covered.

(14) Bilirubin lights are limited to rentals, for at-home newborns with jaundice.

[Statutory Authority: RCW 74.04.050, 74.04.57 [74.04.057], and 74.08.090. 05-21-102, § 388-543-1100, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.08.090, 34.05.353. 03-12-005, § 388-543-1100, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 74.08.090, 74.09.530. 02-16-054, § 388-543-1100, filed 8/1/02, effective 9/1/02; 01-01-078, § 388-543-1100, filed 12/13/00, effective 1/13/01.]

#### **WAC 388-543-1150 Limits and limitation extensions.**

The medical assistance administration (MAA) covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). MAA Limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). MAA approves such requests for LE when medical necessary, under the standards for covered services in WAC 388-501-0165. Procedures for LE are found in MAA's billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

- (1) Antiseptics and germicides:
  - (a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;
  - (b) Alcohol wipes (box of two hundred) - one box per month;
  - (c) Betadine or pHisoHex solution - one pint per month;
  - (d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month;
  - (e) Disinfectant spray - one twelve-ounce bottle or can per six-month period; or
  - (f) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.
- (2) Blood monitoring/testing supplies:
  - (a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period; and
  - (b) Spring-powered device for lancet - one in a six-month period.
- (3) Braces, belts and supportive devices:
  - (a) Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;
  - (b) Surgical stockings (below-the-knee, above-the-knee, thigh-high, or full-length) - two pair per six-month period;
  - (c) Graduated compression stockings for pregnancy support (pantyhose style) - two per twelve-month period;
  - (d) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;
  - (e) Ankle, elbow, or wrist brace - two per twelve-month period;

(f) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

(g) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(4) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;

(b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;

(c) Heel or elbow protectors - four per twelve-month period.

(5) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

(o) Irrigation supply, sleeve - one per month.

(p) Ostomy belt (adjustable) for appliance - two every six months.

(q) Ostomy convex insert - ten per month.

(r) Ostomy ring - ten per month.

(s) Stoma cap - thirty per month.

(t) Ostomy faceplate - ten per month. MAA does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):

(a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhe-

sive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)

(b) For a two-lead TENS unit - one kit per month.

(c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).

(d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).

(7) Urological supplies - diapers and related supplies:

(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:

(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;

(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;

(iii) The padding must provide uniform protection;

(iv) The product must be hypoallergenic;

(v) The product must meet the flammability requirements of both federal law and industry standards; and

(vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:

(i) Be hourglass shaped with formed leg contours;

(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a topsheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;



(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) MAA covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. MAA approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see MAA's billing instructions for how to specify this when billing). The total of all products used cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) Three hundred per month for a child three to eighteen years of age; and

(ii) Two hundred forty per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred forty per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) Three hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred forty per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

(8) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

(9) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. MAA reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Lice comb (e.g., LiceOut TM, or LiesMeister TM, or combs of equivalent quality and effectiveness) - one per year.

(f) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

(g) Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month.

(10) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Diaphragmatic pacing antennae - four per twelve month-period.

(e) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(f) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(12) Positioning devices:

(a) Deluxe floor sitter/feeder seat (small, medium, or large), including floor sitter wedge, shoulder harness, and hip strap - one in a three-year period.

(b) High-back activity chair, including adjustable footrest, two pairs of support blocks, and hip strap - one in a three-year period.

(c) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(d) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(e) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

[Statutory Authority: RCW 74.04.050, 74.04.57 [74.04.057], and 74.08.090. 05-21-102, § 388-543-1150, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-082, § 388-543-1150, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.530. 01-16-141, § 388-543-1150, filed 7/31/01, effective 8/31/01.]

**WAC 388-543-2800 Reusable and disposable medical supplies.** (1) MAA requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible Medicare/Medicaid clients, the prescription must:

(a) Be dated and signed by the prescriber;

(b) Be less than six months in duration from the date the prescriber signs the prescription; and

(c) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(2) MAA bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). MAA considers all of the following when establishing utilization criteria:

(a) High cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(3) MAA requires a provider to obtain a limitation extension in order to exceed the stated limits for nondurable medical equipment and medical supplies. See WAC 388-501-0165.

(4) MAA categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600,

and MAA's billing instructions for further information about specific limitations and requirements for PA and EPA):

- (a) Antiseptics and germicides;
- (b) Bandages, dressings, and tapes;
- (c) Blood monitoring/testing supplies;
- (d) Braces, belts, and supportive devices;
- (e) Decubitus care products;
- (f) Ostomy supplies;
- (g) Pregnancy-related testing kits and nursing equipment supplies;
- (h) Supplies associated with transcutaneous electrical nerve stimulators (TENS);
- (i) Syringes and needles;
- (j) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and
- (k) Miscellaneous supplies.

[Statutory Authority: RCW 74.04.050, 74.04.57 [74.04.057], and 74.08.090, 05-21-102, § 388-543-2800, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.08.090, 74.09.530, 01-16-141, § 388-543-2800, filed 7/31/01, effective 8/31/01; 01-01-078, § 388-543-2800, filed 12/13/00, effective 1/13/01.]

## Chapter 388-544 WAC

### VISION AND HEARING AID SERVICES

#### WAC

388-544-0010	Vision care—General.
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388-544-0350	Vision care—Covered plastic scratch-resistant eyeglass lenses and services.
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388-544-0450	Vision care—Prior authorization.
388-544-0475	Vision care—Noncovered services, eyeglasses, and contact lenses.
388-544-0500	Vision care—Ocular prosthetics.
388-544-0550	Vision care—Surgery.
388-544-0600	Vision care—Payment methodology.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-544-0200	Vision care services MAA covers without MAA's prior authorization. [Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520, 01-01-010, § 388-544-0200, filed 12/6/00, effective 1/6/01.] Repealed by 05-13-038, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225.
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**WAC 388-544-0010 Vision care—General.** (1) The medical assistance administration (MAA) covers the vision care listed in this chapter only, subject to the exceptions, restrictions, and limitations listed in this chapter when they are:

(a) Within the scope of the eligible client's medical care program (see chapter 388-529 WAC); and

(b) Medically necessary as defined in WAC 388-500-0005.

(2) MAA evaluates a request for any service that is listed as noncovered in this chapter under the provisions of WAC 388-501-0160.

(3) MAA evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

(4) MAA evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225, 05-13-038, § 388-544-0010, filed 6/6/05, effective 7/7/05.]

**WAC 388-544-0050 Vision care—Definitions.** The following definitions and those found in WAC 388-500-0005 apply to this chapter. Unless otherwise defined in this chapter, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

**"Blindness"** - A diagnosis of visual acuity for distance vision of twenty/two hundred or worse in the better eye with best correction or a limitation of the client's visual field (widest diameter) subtending an angle of less than twenty degrees from central.

**"Conventional soft contact lenses"** or **"rigid gas permeable contact lenses"** - FDA-approved contact lenses that do not have a scheduled replacement (discard and replace with new contacts) plan. The soft lenses usually last one year, and the rigid gas permeable lenses usually last two years. Although some of these lenses are designed for extended wear, MAA generally approves only those lenses that are designed to be worn as daily wear (remove at night).

**"Disposable contact lenses"** - FDA-approved contact lenses that have a planned replacement schedule (e.g., daily, every two weeks, monthly, quarterly). The contacts are then discarded and replaced with new ones as scheduled. Although many of these lenses are designed for extended wear, MAA generally approves only those lenses that are designed to be worn as daily wear (remove at night).

**"Extended wear soft contacts"** - Contact lenses that are designed to be worn for longer periods than daily wear (remove at night) lenses. These can be conventional soft contact lenses or disposable contact lenses designed to be worn for several days and nights before removal.

**"Hardware"** - Eyeglass frames and lenses and contact lenses.

**"Specialty contact lens design"** - Custom contact lenses that have a more complex design than a standard spherical lens. These specialty contact lenses (e.g., lenticular, aspheric, or myodisc) are designed for the treatment of specific disease processes, such as keratoconus, or are required due to high refractive errors. This definition of specialty contact lens does not include lenses used for surgical implantation.

**"Stable visual condition"** - A client's eye condition has no acute disease or injury; or the client has reached a point after any acute disease or injury where the variation in need for refractive correction has diminished or steadied. The client's vision condition has stabilized to the extent that eyeglasses or contact lenses are appropriate and that any pre-

scription for refractive correction is likely to be sufficient for one year or more.

**"Visual field exams or testing"** - A process to determine defects in the field of vision and test the function of the retina, optic nerve and optic pathways. The process may include simple confrontation to increasingly complex studies with sophisticated equipment.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0050, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0050, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0100 Vision care—Eligible clients. (1)**

Clients who receive services under the following medical assistance programs are eligible for covered vision care:

- (a) **Categorically needy** program (CN or CNP);
- (b) Categorically needy program - children's health insurance program (CNP-CHIP);
- (c) Limited casualty program - medically needy program (LCP-MNP);
- (d) General assistance (GA-U/ADATSA) (within Washington state or designated border cities); and
- (e) Emergency medical only programs when the services are directly related to an emergency medical condition only.

(2) Clients who are enrolled in an MAA managed care plan are eligible under fee-for-service for covered vision care services that are not covered by their plan, subject to the provisions of chapter 388-544 WAC and other applicable WAC.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0100, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0100, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0150 Vision care—Provider requirements. (1)** Enrolled/contracted eye care providers must:

- (a) Meet the requirements in chapter 388-502 WAC;
- (b) Provide only those services that are within the scope of the provider's license;
- (c) Obtain all hardware and contact lenses for MAA clients from MAA's contracted supplier; and
- (d) Return all unclaimed hardware and contact lenses to MAA's contracted supplier using a postage-paid envelope furnished by the contractor.

(2) The following providers are eligible to enroll/contract with MAA to provide and bill for vision care services furnished to eligible clients:

- (a) Ophthalmologists;
- (b) Optometrists;
- (c) Opticians; and
- (d) Ocularists.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0150, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0150, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0250 Vision care—Covered eye services (examinations and refractions). (1)** The medical assistance administration (MAA) covers eye examinations and refraction services for asymptomatic clients under the following conditions and limitations, unless the circumstances in subsections (2) or (3) of this section apply:

(a) For clients twenty-one years of age or older, once every twenty-four months;

(b) For clients twenty years of age or younger, once every twelve months; or

(c) For clients with developmental disabilities, regardless of age, once every twelve months.

(2) MAA covers eye examinations and refraction services as often as medically necessary when:

(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease; or

(b) The client is on medication that affects vision.

(3) MAA covers eye examinations/refractions outside the time limitations in subsection (1) of this section when the eye examination/refraction is necessary due to lost or broken eyeglasses/contacts. In this situation, MAA does not require authorization for children. To receive payment for an adult client, providers must:

(a) Follow the expedited prior authorization process; and

(b) Document the following in the client's file:

(i) The eyeglasses or contacts are lost or broken; and

(ii) The last examination was at least eighteen months ago.

(4) MAA covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. To receive payment, providers must document all of the following in the client's record:

(a) The extent of the testing;

(b) Why the testing was reasonable and necessary for the client; and

(c) The medical basis for the frequency of testing.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0250, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0250, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0300 Vision care—Covered eyeglasses (frames and/or lenses) and repair services. (1)** The medical assistance administration (MAA) covers eyeglasses for asymptomatic clients:

(a) Under the following conditions and limitations:

(i) For clients twenty-one years of age or older, once every twenty-four months;

(ii) For clients twenty years of age or younger, once every twelve months; or

(iii) For clients with developmental disabilities, regardless of age, once every twelve months.

(b) When:

(i) The client has a stable visual condition;

(ii) The client's treatment is stabilized;

(iii) The prescription is less than eighteen months old; and

(iv) One of the following minimum correction needs in a least one eye is documented in the client's file:

(A) Sphere power equal to, or greater than, plus or minus 0.50 diopter;

(B) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or

(C) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.

(2) MAA covers eyeglasses and/or lenses for clients who are twenty years of age or younger with a diagnosis of accommodative esotropia or any strabismus correction. In this situation, the client is not subject to the requirements in subsection (1)(b) of this section.

(3) MAA covers selected frames called "durable" or "flexible" frames through MAA's contracted supplier when a client has a diagnosed medical condition that has contributed to two or more broken eyeglass frames in a twelve-month period. To receive payment, providers must follow the expedited prior authorization process.

(4) MAA covers the cost of coating contact eyeglass frames to make the frames nonallergenic if the client has a medically diagnosed and documented allergy to the materials in the available eyeglass frames.

(5) MAA pays for incidental repairs to a client's eyeglass frames when all of the following apply:

(a) The provider typically charges the general public for the repair or adjustment;

(b) The contractor's one year warranty period has expired; and

(c) The cost of the repair does not exceed MAA's cost for replacement frames.

(6) MAA covers replacement eyeglass frames and/or lenses that have been lost or broken. To receive payment, providers must follow the expedited prior authorization process for clients twenty-one years of age and older. MAA does not require authorization for clients who are twenty years of age and younger or for clients with developmental disabilities, regardless of age. (See WAC 388-544-0350 for additional coverage of lens replacement.)

(7) MAA covers one pair of back-up eyeglasses when contact lenses are medically necessary and the contact lenses are the client's primary visual correction aid as described in WAC 388-544-0400(1). MAA limits coverage for back-up eyeglasses as follows:

(a) For clients twenty-one years of age and older, once every six years;

(b) For clients twenty years of age or younger, once every two years; or

(c) For clients with developmental disabilities, regardless of age, once every two years.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225, 05-13-038, § 388-544-0300, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520, 01-01-010, § 388-544-0300, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0350 Vision care—Covered plastic scratch-resistant eyeglass lenses and services.** (1) The medical assistance administration (MAA) covers the following plastic scratch-resistant eyeglass lenses:

(a) Single vision lenses;

(b) Round or flat top D-style bifocals;

(c) Flat top trifocals; and

(d) Slab-off and prism lenses (including Fresnel lenses).

(2) MAA allows bifocal lenses to be replaced with single vision or trifocal lenses or trifocal lenses to be replaced with bifocal or single vision lenses when all of the following apply:

(a) A client has attempted to adjust to the bifocals or trifocals for at least sixty days;

(b) The client is unable to make the adjustment; and

(c) The bifocal or trifocal lenses being replaced are returned to the provider.

(3) MAA covers high index lenses for clients who require one of the following in at least one eye:

(a) A spherical refractive correction of plus or minus eight diopters or greater; or

(b) A cylinder correction of plus or minus three diopters or greater.

To receive payment, providers must follow the expedited prior authorization process.

(4) MAA covers the tinting of plastic lenses through MAA's contracted lens supplier. The client's medical need must be diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:

(a) Blindness;

(b) Chronic corneal keratitis;

(c) Chronic iritis, iridocyclitis;

(d) Diabetic retinopathy;

(e) Fixed pupil;

(f) Glare from cataracts;

(g) Macular degeneration;

(h) Migraine disorder;

(i) Ocular albinism;

(j) Optic atrophy and/or optic neuritis;

(k) Rare photo-induced epilepsy conditions; or

(l) Retinitis pigmentosa.

(5) MAA covers plastic photochromatic lenses when the client's medical need is diagnosed as relating to ocular albinism or retinitis pigmentosa.

(6) MAA covers polycarbonate lenses as follows:

(a) For clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required;

(b) Infants and toddlers with motor ataxia;

(c) For clients twenty years of age or younger who are diagnosed with strabismus or amblyopia; or

(d) For clients with developmental disabilities.

(7) MAA covers requests for lenses only when the client owns frames not purchased by MAA, when:

(a) The eyeglass frames are serviceable (MAA and MAA's contractor do not accept responsibility for these frames); and

(b) The size and style of the required lenses meet MAA's contract requirements.

(8) MAA covers replacement lenses as follows:

(a) Due to lost or broken lenses according to WAC 388-544-0300(6); and

(b) Due to refractive changes, without regard to time limits, when caused by one of the following:

(i) Eye surgery, the effects of prescribed medication, or one or more diseases affecting vision. In this case, all of the following must be documented in the client's file:

(A) The client has a stable visual condition;

(B) The client's treatment is stabilized;

(C) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and

(D) The previous and new refraction.

(ii) Headaches, blurred vision, or difficulty with school or work. In this case, all of the following must be documented in the client's file:

(A) Copy of current prescription (less than eighteen months old);

(B) Date of last dispensing, if known;

(C) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and

(D) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.

(c) To receive payment for replacement lenses, providers must follow the expedited prior authorization process.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, and 42 C.F.R. 440.120 and 440.225. 05-17-153, § 388-544-0350, filed 8/22/05, effective 9/22/05; 05-13-038, § 388-544-0350, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0350, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0400 Vision care—Covered contact lenses and services.** (1) The medical assistance administration (MAA) covers the following types of contact lenses as the client's primary refractive correction method when a client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. In order to qualify for the spherical correction, the prescription may be from either the glasses or the contact lenses prescriptions and/or written in either "minus cyl" or "plus cyl" form. See subsection (2) of this section for exception to the plus or minus 6.0 diopter criteria.

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses; or

(ii) Four pairs of three-month replacement contact lenses.

(2) For clients diagnosed with high anisometropia, MAA covers the contact lenses in subsection (1) of this section when the client's refractive error difference between the two eyes is plus or minus 3.0 diopters and eyeglasses cannot reasonably correct the refractive errors.

(3) A client who qualifies for contact lenses as the primary refractive correction method must choose one style of contact lenses from those listed in subsection (1) of this section for each twelve-month period of coverage.

(4) MAA covers soft toric contact lenses for clients with astigmatism requiring a cylinder correction of plus or minus 1.0 diopter in at least one eye and the client also meets the spherical correction listed in subsection (1) of this section.

(5) MAA covers specialty contact lens designs for clients who are diagnosed with one or more of the following:

(a) Aphakia;

(b) Keratoconus; or

(c) Corneal softening.

(6) MAA covers replacement contact lenses as follows:

(a) Once every twelve months for lost or damaged contact lenses; or

(b) As often as medically necessary when all of the following apply:

(i) One of the following caused the vision change:

(A) Eye surgery;

(B) The effect(s) of prescribed medication; or

(C) One or more diseases affecting vision.

(ii) The client has a stable visual condition;

(iii) The client's treatment is stabilized; and

(iv) The lens correction has a 1.0 or greater diopter change in at least one eye between the sphere or cylinder correction. The previous and new refraction must be documented in the client's record.

(c) To receive payment for adults, providers must follow the expedited prior authorization process. Prior authorization is not required for children or for clients with developmental disabilities.

(7) MAA covers therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0400, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0400, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0450 Vision care—Prior authorization.** (1) The medical assistance administration (MAA) requires a provider to follow the prior authorization and expedited prior authorization (EPA) process for certain vision care services as identified in this chapter.

(2) For prior authorization (PA), a provider must call or fax MAA using the appropriate telephone or fax number listed in MAA's published vision care billing instructions.

(3) For expedited prior authorization (EPA), a provider must create an EPA number. The process and criteria used to create this authorization number are explained in MAA's published vision care billing instructions. The EPA number must be used when the provider bills MAA.

(4) MAA denies payment for vision care submitted without the required PA or EPA number, or the appropriate diagnosis or procedure code as indicated by the EPA number.

(5) Upon request, a provider must provide documentation to MAA showing how the client's condition met the criteria for PA or EPA.

(6) MAA may recoup any payment made to a provider under this chapter if MAA later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).

(7) When a client's situation does not meet the EPA criteria for vision care, or a requested service or item exceeds the limit indicated in this chapter, a provider must follow the requirements of WAC 388-501-0165.

(8) MAA evaluates a request for any service that is listed as noncovered in this chapter under the provisions of WAC 388-501-0160.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0450, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0450, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0475 Vision care—Noncovered services, eyeglasses, and contact lenses.** The medical assistance administration (MAA) does not cover the following:

(1) Executive style eyeglass lenses;

(2) Bifocal contact lenses;

- (3) Daily and two week disposable contact lenses;
- (4) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
- (5) Services for cosmetic purposes only;
- (6) Glass lenses including those that darken when exposed to light;
- (7) Group vision screening for eyeglasses;
- (8) Nonglare or anti-reflective lenses;
- (9) Orthoptics and visual training therapy;
- (10) Progressive lenses;
- (11) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.
- (12) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");
- (13) Upgrades at private expense to avoid MAA's contract limitations (e.g., frames that are not available through MAA's contract or noncontract frames or lenses for which the client or other person pays the difference between MAA's payment and the total cost).

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0475, filed 6/6/05, effective 7/7/05.]

**WAC 388-544-0500 Vision care—Ocular prosthetics.** The medical assistance administration (MAA) covers medically necessary ocular prosthetics when provided by any of the following:

- (1) An ophthalmologist;
- (2) An ocularist; or
- (3) An optometrist who specializes in orthotics.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0500, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0500, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0550 Vision care—Surgery.** (1) The medical assistance administration (MAA) covers cataract surgery when:

- (a) It is included in the scope of care for the client's medical program;
- (b) It is medically necessary as defined in subsection (2) of this section; and
- (c) The provider clearly documents the need in the client's record.

(2) MAA considers cataract surgery to be medically necessary when the client has:

- (a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or
- (b) One or more of the following conditions:
  - (i) Dislocated or subluxated lens;
  - (ii) Intraocular foreign body;
  - (iii) Ocular trauma;
  - (iv) Phacogenic glaucoma;
  - (v) Phacogenic uveitis;
  - (vi) Phacoanaphylactic endophthalmitis; or
  - (vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.
- (3) MAA covers strabismus surgery as follows:

(a) For clients seventeen years of age and younger, when medically necessary. The provider must clearly document the need in the client's record.

(b) For clients eighteen years of age and older when:

- (i) The client has double vision; and
- (ii) The surgery is not performed for cosmetic reasons.

(c) To receive payment for clients eighteen years of age and older, providers must follow MAA's expedited prior authorization process listed in WAC 388-544-0450. MAA does not require authorization for clients seventeen years of age and younger.

(4) MAA covers blepharoplasty or blepharoptosis surgery for noncosmetic reasons when:

- (a) The excess upper eyelid skin impairs the vision by blocking the superior visual field; and
- (b) The vision is blocked to within ten degrees of central fixation using a central visual field test.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0550, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0550, filed 12/6/00, effective 1/6/01.]

**WAC 388-544-0600 Vision care—Payment methodology.** (1) In order to receive payment, vision care providers must bill the medical assistance administration (MAA) according to the conditions of payment under WAC 388-502-0020 (1)(a) through (c) and WAC 388-502-0100 and MAA's published billing instructions.

(2) MAA covers one hundred percent of the MAA contract price for eyeglass frames, lenses, and contact lenses when these items are obtained through MAA's approved contract(s).

(3) See WAC 388-531-1850 for professional fee payment methodology.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520 and 42 C.F.R. 440.120 and 440.225. 05-13-038, § 388-544-0600, filed 6/6/05, effective 7/7/05. Statutory Authority: RCW 74.08.090, 74.09.510 and 74.09.520. 01-01-010, § 388-544-0600, filed 12/6/00, effective 1/6/01.]

## Chapter 388-550 WAC HOSPITAL SERVICES

### WAC

388-550-2301	Hospital and medical criteria requirements for bariatric surgery.
388-550-2800	Inpatient payment methods and limits.
388-550-3000	Payment method—DRG.
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388-550-4800	Hospital payment methods—State administered programs.
388-550-4900	Disproportionate share payments.
388-550-5210	Payment method—SRHIAAPDSH.
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388-550-5400	Payment method—PHDSH.
388-550-6800	Proportionate share payments for inpatient hospital services.

**DISPOSITION OF SECTIONS FORMERLY  
CODIFIED IN THIS CHAPTER**

388-550-5100	Payment method—MIDSH. [Statutory Authority: RCW 74.08.090, 74.04.050, and 2003 1st sp.s. c 25. 04-12-044, § 388-550-5100, filed 5/28/04, effective 7/1/04. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5100, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5100, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5100, filed 12/18/97, effective 1/18/98.] Repealed by 05-12-132, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.04.050, 74.08.090.
388-550-5250	Payment method—THAPDSH. [Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5250, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5250, filed 12/18/97, effective 1/18/98.] Repealed by 05-12-132, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.04.050, 74.08.090.
388-550-5300	Payment method—STHFPDSH. [Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 02-21-019, § 388-550-5300, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5300, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5300, filed 12/18/97, effective 1/18/98.] Repealed by 05-12-132, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.04.050, 74.08.090.
388-550-5350	Payment method—CTHFPDSH. [Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 02-21-019, § 388-550-5350, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5350, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5350, filed 12/18/97, effective 1/18/98.] Repealed by 05-12-132, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.04.050, 74.08.090.
388-550-6900	Proportionate share payments for outpatient hospital services. [Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-6900, filed 6/12/03, effective 7/13/03.] Repealed by 05-12-132, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.04.050, 74.08.090.

**WAC 388-550-2301 Hospital and medical criteria requirements for bariatric surgery.** (1) The medical assistance administration (MAA) pays a hospital for bariatric surgery and bariatric surgery-related services only when:

(a) The client qualifies for bariatric surgery by successfully completing all requirements under WAC 388-531-1600;

(b) The client continues to meet the criteria to qualify for bariatric surgery under WAC 388-531-1600 up to the actual surgery date; and

(c) The hospital providing the bariatric surgery and bariatric surgery-related services meets the requirements in this section and other applicable WAC.

(2) A hospital must meet the following requirements in order to be reimbursed for bariatric surgery and bariatric surgery-related services provided to an eligible medical assistance client. The hospital must:

(a) Be located in Washington state or approved bordering cities (see WAC 388-501-0175) and have a current core provider agreement with MAA.

(b) Have an established bariatric surgery program in operation under which at least one hundred bariatric surgery procedures have been performed. The program must have been in operation for at least five years and be under the direction of an experienced board-certified surgeon. In addition, MAA requires the bariatric surgery program to:

(i) Have a mortality rate of two percent or less;

(ii) Have a morbidity rate of fifteen percent or less;

(iii) Document patient follow-up for at least five years postsurgery;

(iv) Have an average loss of at least fifty percent of excess body weight achieved by patients at five years postsurgery; and

(v) Have a reoperation or revision rate of five percent or less.

(c) Submit documents to MAA's Division of Medical Management that verify the performance requirements listed in this section. The hospital must receive approval from MAA prior to performing a bariatric surgery for a medical assistance client.

(3) MAA waives the program requirements listed in subsection (2)(b) of this section if the hospital participates in a statewide bariatric surgery quality assurance program such as the Clinical Outcomes Assessment Program (COAP).

(4) See WAC 388-531-1600(13) for requirements for surgeons who perform bariatric surgery.

(5) Authorization does not guarantee payment. Authorization for bariatric surgery and bariatric surgery-related services is valid only if:

(a) The client is eligible on the date of service; and

(b) The provider meets the criteria in this section and other applicable WAC to perform bariatric surgery and/or to provide bariatric surgery-related services.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-12-022, § 388-550-2301, filed 5/20/05, effective 6/20/05.]

**WAC 388-550-2800 Inpatient payment methods and limits.** (1) The department reimburses hospitals for Medicaid inpatient hospital services using the rate setting methods identified in the department's approved state plan that includes:

Method	Used for
Diagnoses related group (DRG) negotiated conversion factor	Hospitals participating in the Medicaid hospital selective contracting program under waiver from the federal government
DRG cost-based conversion factor	Hospitals not participating in or exempt from the Medicaid hospital selective contracting program
Ratio of costs-to-charges (RCC)	Hospitals or services exempt from DRG payment methods
Single case rate	Bariatric surgery
Fixed per diem rate	Acute physical medicine and rehabilitation (Acute PM&R) Level B facilities and long-term acute care (LTAC) hospitals



Method	Used for
Cost settlement	MAA-approved critical access hospitals (CAHS)

(2) The department's annual aggregate Medicaid payments to each hospital for inpatient hospital services provided to Medicaid clients will not exceed the hospital's usual and customary charges to the general public for the services (42 CFR § 447.271). The department recoups annual aggregate Medicaid payments that are in excess of the usual and customary charges.

(3) The department's annual aggregate payments for inpatient hospital services, including state-operated hospitals, will not exceed the estimated amounts that the department would have paid using Medicare payment principles.

(4) When hospital ownership changes, the department's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(5) Hospitals participating in the medical assistance program must annually submit to the medical assistance administration:

(a) A copy of the hospital's HCFA 2552 Medicare Cost Report; and

(b) A disproportionate share hospital application.

(6) Reports referred to in subsection (5) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by MAA.

(7) The department requires hospitals to follow generally accepted accounting principles unless federally or state regulated.

(8) Participating hospitals must permit the department to conduct periodic audits of their financial and statistical records.

(9) The department reimburses hospitals for claims involving clients with third-party liability insurance:

(a) At the lesser of either the DRG:

(i) Billed amount minus the third-party payment amount; or

(ii) Allowed amount minus the third-party payment amount; or

(b) The RCC allowed payment minus the third-party payment amount.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-12-022, § 388-550-2800, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 74.08.090 and 74.09.500, 04-19-113, § 388-550-2800, filed 9/21/04, effective 10/22/04. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290, 02-21-019, § 388-550-2800, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652, 01-16-142, § 388-550-2800, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.09.090, 42 U.S.C. 1395x(v) and 1396r-4, 42 C.F.R. 447.271, 11303 and 2652, 99-14-027, § 388-550-2800, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 USC 1395 x(v), 42 CFR 447.271, 447.11303, and 447.2652, 99-06-046, § 388-550-2800, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020, 98-01-124, § 388-550-2800, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-3000 Payment method—DRG.** (1) The medical assistance administration (MAA) uses the diagnosis-related group (DRG) payment method to reimburse covered

inpatient hospital services, except as specified in WAC 388-550-4300 and 388-550-4400.

(2) MAA uses the all-patient grouper (AP-DRG) to assign a DRG to each inpatient hospital stay. MAA periodically evaluates which version of the AP-DRG to use.

(3) A DRG payment includes, but is not limited to:

(a) All covered hospital services provided to a client during the client's inpatient hospital stay.

(b) Outpatient hospital services, including preadmission, emergency room, and observation services related to an inpatient hospital admission and provided within one calendar day of a client's inpatient hospital admission. These outpatient services must be billed on the inpatient hospital claim (see WAC 388-550-6000 (3)(c)).

(c) Any specific service(s), treatment(s), or procedure(s) (such as renal dialysis services) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s) during the client's inpatient stay; and

(ii) The client returns as an inpatient to the admitting hospital.

(d) All transportation costs for an inpatient client when the client requires transportation to another facility or provider for a specific service(s), treatment(s), or procedure(s) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s); and

(ii) The client returns as an inpatient to the admitting hospital.

(4) MAA's DRG payment is determined by multiplying the assigned DRG's relative weight, as determined in WAC 388-550-3100, by the hospital's conversion factor. See WAC 388-550-3450 and 388-550-4600(4).

(5) MAA's DRG payments to hospitals may be adjusted when one or more of the following occur:

(a) A claim qualifies as a DRG high-cost or low-cost outlier (see WAC 388-550-3700);

(b) A client transfers from one acute care hospital or distinct unit to another acute care hospital or distinct unit (see WAC 388-550-3600);

(c) A client is not eligible for a medical assistance program on one or more of the days of the hospital stay;

(d) A client is eligible for Part B Medicare and Medicare has made a payment for the Part B hospital charges; or

(e) A client is discharged from an inpatient hospital stay and is readmitted as an inpatient within seven days. MAA or its designee performs a retrospective utilization review (see WAC 388-550-1700 (3)(b)(iii)) on the initial admission and the readmission(s) to determine which inpatient hospital stay(s) qualify for DRG payment.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-11-077, § 388-550-3000, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 42 USC 1395 x(v), 42 CFR 447.271, 447.11303, and 447.2652, 99-06-046, § 388-550-3000, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020, 98-01-124, § 388-550-3000, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-3300 Hospital peer groups and cost caps.** (1) For rate-setting purposes the department groups

hospitals into peer groups and establishes cost caps for each peer group. The department sets hospital reimbursement rates at levels that recognize the costs of reasonable, efficient, and effective providers.

(2) The six medical assistance administration (MAA) hospital peer groups are:

- (a) Group A, rural hospitals;
- (b) Group B, urban hospitals without medical education programs;
- (c) Group C, urban hospitals with medical education program;
- (d) Group D, specialty hospitals or other hospitals not easily assignable to the other five groups;
- (e) Group E, public hospitals participating in the "full cost" public hospital certified public expenditure (CPE) program; and
- (f) Group F, critical access hospitals.

(3) MAA uses a cost cap at the seventieth percentile for hospitals in peer groups B and C. All other peer groups are exempt from the cost cap.

(a) MAA exempts peer group A hospitals from the cost cap because they are paid under the ratio of costs-to-charges methodology for Medicaid claims.

(b) MAA exempts peer group D hospitals from the cost cap because they are specialty hospitals without a common peer group on which to base comparisons.

(c) MAA exempts peer group E hospitals from the cost cap because they are paid under the ratio of costs-to-charges (RCC) methodology for Medicaid and GAU inpatient claims.

(d) MAA exempts peer group F hospitals from the cost cap because they are paid under the departmental weighted costs-to-charges methodology for Medicaid claims.

(4) MAA calculates a peer group's cost cap based on the hospitals' base period costs after subtracting:

(a) Indirect medical education costs, in accordance with WAC 388-550-3250(2), from the aggregate operating and capital costs of each hospital in the peer group; and

(b) The cost of outlier cases from the aggregate costs in accordance with WAC 388-550-3350(1).

(5) MAA uses the lesser of each individual hospital's calculated aggregate cost or the peer group's seventieth percentile cost cap as the base amount in calculating the individual hospital's adjusted cost-based conversion factor. After the peer group cost cap is calculated, MAA adds back to the individual hospital's base amount its indirect medical education costs and appropriate outlier costs, as determined in WAC 388-550-3350(2).

(6) In cases where corrections or changes in an individual hospital's base-year cost or peer group assignment occur after peer group cost caps are calculated, MAA updates the peer group cost caps involved only if the change in the individual hospital's base-year costs or peer group assignment will result in a five percent or greater change in the seventieth percentile of costs calculated for either its previous peer group category, its new peer group category, or both.

[Statutory Authority: RCW 74.04.050, 74.08.090. 05-12-132, § 388-550-3300, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. 01-16-142, § 388-550-3300, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-3300, filed 12/18/97, effective 1/18/98.]

#### **WAC 388-550-3800 Rebasing and recalibration. (1)**

The medical assistance administration (MAA) rebases the Medicaid payment system periodically using each hospital's cost report for its fiscal year that ends during the calendar year designated by MAA to be used for each update.

(2) MAA recalibrates diagnosis-related group (DRG) relative weights periodically, as described in WAC 388-550-3100, but no less frequently than each time rebasing is conducted. The department makes recalibrated relative weights effective on the rate implementation date, which can change with each rebasing.

(3) When recalibrating DRG relative weights without rebasing, MAA may apply a budget neutrality factor (BNF) to hospitals' cost based conversion factors to ensure that total DRG payments to hospitals do not exceed total DRG payments that would have been made to hospitals if the relative weights had not been recalibrated. For the purposes of this section, BNF equals the percentage change from total reimbursement calculated under a new payment system to total reimbursement calculated under the prior payment system.

[Statutory Authority: RCW 74.08.090, 74.09.500. 05-06-044, § 388-550-3800, filed 2/25/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. 01-16-142, § 388-550-3800, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-3800, filed 12/18/97, effective 1/18/98.]

#### **WAC 388-550-4300 Hospitals and units exempt from the DRG payment method. (1)**

Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are reimbursed under the RCC payment method described in WAC 388-550-4500.

(2) Subject to the restrictions and limitations listed in this section, the department exempts the following hospitals and units from the DRG payment method for inpatient services provided to Medicaid-eligible clients:

(a) Peer group A hospitals, as described in WAC 388-550-3300(2). Exception: Inpatient services provided to clients eligible under the following programs are reimbursed through the DRG payment method:

- (i) General assistance programs; and
- (ii) Other state-only administered programs.

(b) Peer group E hospitals, as described in WAC 388-550-3300(2). See WAC 388-550-4650 for how the department calculates payment to Peer group E hospitals.

(c) Peer group F hospitals (critical access hospitals).

(d) Rehabilitation units when the services are provided in medical assistance administration (MAA)-approved acute physical medicine and rehabilitation (acute PM&R) hospitals and designated distinct rehabilitation units in acute care hospitals.

MAA uses the same criteria as the Medicare program to identify exempt rehabilitation hospitals and designated distinct rehabilitation units. Exception: Inpatient rehabilitation services provided to clients eligible under the following programs are covered and reimbursed through the DRG payment method:

- (i) General assistance programs; and
- (ii) Other state-only administered programs.

(e) Out-of-state hospitals excluding hospitals located in designated bordering cities as described in WAC 388-501-0175. Inpatient services provided in out-of-state hospitals to clients eligible under the following programs are not covered or reimbursed by the department:

- (i) General assistance programs; and
- (ii) Other state-only administered programs.

(f) Military hospitals when no other specific arrangements have been made with the department. Military hospitals may individually elect or arrange for one of the following payment methods in lieu of the RCC payment method:

- (i) A negotiated per diem rate; or
- (ii) DRG.

(g) Nonstate-owned specifically identified psychiatric hospitals and designated hospitals with Medicare certified distinct psychiatric units. The department uses the same criteria as the Medicare program to identify exempt psychiatric hospitals and distinct psychiatric units of hospitals.

(i) Inpatient psychiatric services provided to clients eligible under the following programs are reimbursed through the DRG payment method:

- (A) General assistance programs; and
- (B) Other state-only administered programs.

(ii) If the department determines that the psychiatric services provided to a client eligible under a program listed in subsection (2)(g)(i) of this section qualify for a special exemption, the services may be reimbursed by using the ratio of costs-to-charges (RCC) payment method.

(iii) Regional support networks (RSNs) that arrange to reimburse nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals directly, may use the department's payment methods or contract with the hospitals to reimburse using different methods. Claims not paid directly through an RSN are paid through the department's MMIS payment system.

(3) The department limits inpatient hospital stays that are exempt from the DRG payment method and identified in subsection (2) of this section to the number of days established at the seventy-fifth percentile in the current edition of the publication, *"Length of Stay by Diagnosis and Operation, Western Region,"* unless the stay is:

(a) Approved for a specific number of days by the department, or for psychiatric inpatient stays, by the regional support network (RSN);

(b) For chemical dependency treatment which is subject to WAC 388-550-1100; or

(c) For detoxification of acute alcohol or other drug intoxication.

(4) If subsection (3)(c) of this section applies to an eligible client, the department will:

(a) Pay for three-day detoxification services for an acute alcoholic condition; or

(b) Pay for five-day detoxification services for acute drug addiction when the services are directly related to detoxification; and

(c) Extend the three- and five-day limitations for up to six additional days if either of the following is invoked on a client under care in a hospital:

(i) Petition for commitment to chemical dependency treatment; or

(ii) Temporary order for chemical dependency treatment.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-4300, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652, 01-16-142, § 388-550-4300, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020, 98-01-124, § 388-550-4300, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-4400 Services—Exempt from DRG payment.** (1) Except when otherwise specified, inpatient services exempt from the diagnosis-related group (DRG) payment method are reimbursed by the RCC payment method described in WAC 388-550-4500.

(2) Subject to the restrictions and limitations in this section, the department exempts the following services for Medicaid clients from the DRG payment method:

(a) Neonatal services for DRGs 602-619, 621-628, 630, 635, and 637-641.

(b) Acquired immunodeficiency syndrome (AIDS)-related inpatient services for those cases with a reported diagnosis of AIDS-related complex and other human immunodeficiency virus infections. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs and any other state-only administered program.

(c) Alcohol or other drug detoxification services when provided in a hospital having a detoxification provider agreement with the department to perform these services. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs and any other state-only administered program.

(d) Hospital-based intensive inpatient detoxification, medical stabilization, and drug treatment services provided to chemically dependent pregnant women (CUP program) by a certified hospital. These are Medicaid program services and are not funded by the department through the general assistance programs or any other state-only administered program.

(e) Acute physical medicine and rehabilitation services provided in MAA-approved rehabilitation hospitals and hospital distinct units, and services for physical medicine and rehabilitation patients. Rehabilitation services provided to clients under the general assistance programs and any other state-only administered program are also reimbursed through the RCC payment method.

(f) Psychiatric services provided in nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals.

(g) Chronic pain management treatment provided in department-approved pain treatment facilities.

(h) Administrative day services. The department reimburses administrative days based on the statewide average Medicaid nursing facility per diem rate, which is adjusted annually each November 1. The department applies this rate to patient days identified as administrative days on the hospital's notice of rates. Hospitals must request an administrative day designation on a case-by-case basis.

(i) Inpatient services recorded on a claim that is grouped by MAA to a DRG for which MAA has not published an all

patient DRG relative weight, except that claims grouped to DRGs 469 and 470 will be denied payment. This policy also applies to covered services paid through the general assistance programs and any other state-only administered program.

(j) Organ transplants that involve the heart, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, or simultaneous kidney/pancreas. These services are also exempt from the DRG payment method when funded by MAA through the general assistance programs and any other state-only administered program.

(k) Bariatric surgery performed in hospitals that meet the criteria in WAC 388-550-2301. MAA pays hospitals for bariatric surgery on a single case rate basis.

(3) Inpatient services provided through a managed care plan contract are reimbursed by the managed care plan.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-12-022, § 388-550-4400, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. 01-16-142, § 388-550-4400, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-4400, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-4600 Hospital selective contracting program.** (1) The department designates selective contracting areas (SCA) in which hospitals participate in competitive bidding to provide hospital services to Medicaid clients. Selective contracting areas are based on historical patterns of hospital use by Medicaid clients.

(2) The department requires Medicaid clients in a selective contracting area obtain their elective (nonemergent) inpatient hospital services from participating or exempt hospitals in the SCA. Elective (nonemergent) inpatient hospital services provided by nonparticipating hospitals in an SCA shall not be reimbursed by the department, except as provided in WAC 388-550-4700.

(3) The department exempts from the selective contracting program those hospitals that are:

(a) In an SCA but designated by the department as remote. The department designates as remote, hospitals meeting the following criteria:

(i) Located more than ten miles from the nearest hospital in the SCA;

(ii) Having fewer than seventy-five beds; and

(iii) Having fewer than five hundred Medicaid admissions in a two-year period.

(b) Owned by health maintenance organizations (HMOs) and providing inpatient services to HMO enrollees only;

(c) Children's hospitals;

(d) State psychiatric hospitals or separate (freestanding) psychiatric facilities;

(e) Out-of-state hospitals located in nonbordering cities, and out-of-state hospitals in bordering cities not designated as selective contracting areas;

(f) Peer group E hospitals; and

(g) Peer group F hospitals (critical access hospitals).

(4) MAA:

(a) Negotiates with selectively contracted hospitals a negotiated conversion factor (NCF) for inpatient hospital services provided to Medicaid clients.

(b) Calculates its maximum financial obligation for a Medicaid client under the hospital selective contract in the same manner as DRG payments using cost-based conversion factors (CBCFs).

(c) Applies NCFs to Medicaid clients only. (MAA uses CBCFs in calculating payments for medical care services clients.)

[Statutory Authority: RCW 74.04.050, 74.08.090. 05-12-132, § 388-550-4600, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-4600, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program.** (1) The medical assistance administration's (MAA's) "full cost" public hospital certified public expenditure (CPE) payment program is a public hospital program that pays eligible hospitals the same amount as the Medicaid federal match portion of the "full cost" of covered medically necessary services. MAA uses the ratio of costs-to-charges methodology described in WAC 388-550-4500 to determine "full cost."

(2) Only the following facilities are reimbursed through the "full cost" public hospital CPE payment program:

(a) Public hospitals located in the state of Washington that are:

(i) Owned by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(3) Payments made under the CPE payment program are limited to inpatient hospital services provided to clients eligible under the Medicaid and general assistance-unemployable (GA-U) fee-for-service programs.

(4) Each hospital described in subsection (2) of this section is responsible to provide certified public expenditures as the required state match for claiming federal Medicaid funds. Certified public expenditures cannot include federal funds or money used to match federal funds.

(5) Payments made by MAA under the CPE payment program equal the hospital's RCC rate times allowable charges times the state's Medicaid federal match percentage.

(6) Client responsibility and third party liability as identified on the hospital claim or by MAA are deducted from the basic payment to determine MAA's actual payment for that admission.

[Statutory Authority: RCW 74.04.050, 74.08.090. 05-12-132, § 388-550-4650, filed 6/1/05, effective 7/1/05.]

**WAC 388-550-4800 Hospital payment methods—State administered programs.** (1) Except as provided in subsection (2) of this section, the medical assistance administration (MAA) uses the ratio of costs-to-charges (RCC) and diagnosis-related group (DRG) payment methods described in this section to reimburse hospitals at reduced rates for covered services provided to a client not eligible under any Medicaid program and:

(a) Who qualifies for the general assistance unemployable (GAU) program; or

(b) Is involuntarily detained under the Involuntary Treatment Act (ITA)[.]

(2) MAA exempts the following services from the state-administered programs' payment methods and/or reduced rates:

(a) Detoxification services when the services are provided under an MAA-assigned provider number starting with "thirty-six." (MAA reimburses these services using the Title XIX Medicaid RCC payment method.)

(b) Program services provided by MAA-approved critical access hospitals (CAHs) to clients eligible under state-administered programs. (MAA reimburses these services through cost settlement as described in WAC 388-550-2598.)

(c) Program services provided by Peer group E hospitals to clients eligible under the GAU program. (MAA reimburses these services through the "full cost" public hospital certified public expenditure (CPE) program (see WAC 388-550-4650)).

(3) MAA determines:

(a) A state-administered program RCC payment by reducing a hospital's Title XIX Medicaid RCC rate using the hospital's ratable.

(b) A state-administered program DRG payment by reducing a hospital's Title XIX Medicaid DRG cost based conversion factor (CBCF) using the hospital's ratable and equivalency factor (EF).

(4) MAA determines:

(a) The RCC rate for the state-administered programs mathematically as follows:

State-administered programs' RCC rate = current Title XIX Medicaid RCC rate x (one minus the current hospital ratable)

(b) The DRG conversion factor (CF) for the state-administered programs mathematically as follows:

State-administered programs' DRG CF = current Title XIX Medicaid DRG CBCF x (one minus the current hospital ratable) x EF

(5) MAA determines payments to hospitals for covered services provided to clients eligible under the state-administered programs mathematically as follows:

(a) Under the RCC payment method:

State-administered programs' RCC payment = state-administered programs' RCC Rate x allowed charges

(b) Under the DRG payment method:

State-administered programs' DRG payment = state-administered programs' DRG CF x all patient DRG relative weight (See subsection (6) of this section for how MAA determines payment for state-administered program claims that qualify as DRG high-cost outliers.)

(6) For state-administered program claims that qualify as DRG high-cost outliers, MAA determines:

(a) In-state children's hospital payments for state-administered program claims that qualify as DRG high-cost outliers mathematically as follows:

Eighty-five percent of the allowed charges above the outlier threshold x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the DRG allowed amount

(b) Psychiatric DRG high-cost outlier payments for DRGs 424 through 432 mathematically as follows:

One hundred percent of the allowed charges above the outlier threshold x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the applicable DRG allowed amount

(c) Payments for all other claims that qualify as DRG high-cost outliers as follows:

Sixty percent x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the applicable DRG allowed amount

High-cost Outlier Calculations for Qualifying Claims State-administered Programs (for admission dates January 1, 2001 and after)														
In-state Children's Hospitals Allowed charges	(-)	> of \$33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Rat-able	(x)	85%	(=)	Outlier Add-on Amount	(+)	*DRG Allowed Amount
Psychiatric DRGs 424-432 Allowed charges	(-)	> of \$33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Rat-able	(x)	100%	(=)	Outlier Add-on Amount	(+)	* DRG Allowed Amount
All other qualifying claims Allowed charges	(-)	> of \$33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Rat-able	(x)	60%	(=)	Outlier Add-on Amount	(+)	* DRG Allowed Amount
*Basic DRG allowed amount calculation: DRG relative weight x conversion factor = DRG allowed amount														

(7) See WAC 388-550-3700(5) for how claims qualify as low-cost outliers.

(8) MAA determines payments for claims that qualify as DRG low-cost outliers mathematically as follows:

Allowed charges for the claim x the specific hospital's RCC rate x (one minus the current hospital ratable)

(9) To calculate a hospital's ratable that is applied to both the Title XIX Medicaid RCC rate and the Title XIX Medicaid DRG CBCF used to determine the respective state-administered program's reduced rates, MAA:

(a) Adds the hospital's Medicaid revenue (Medicaid revenue as reported by department of health (DOH) includes all

Medicaid revenue and all other medical assistance revenue) and Medicare revenue to the value of the hospital's charity care and bad debts, all of which is taken from the most recent complete calendar year data available from DOH at the time of the ratable calculation; then

(b) Deducts the hospital's low-income disproportionate share hospital (LIDSH) revenue from the amount derived in (a) of this subsection to arrive at the hospital's community care dollars; then

(c) Subtracts the hospital-based physicians revenue that is reported in the hospital's most recent HCFA-2552 Medicare cost report received by MAA at the time of the ratable

calculation, from the total hospital revenue reported by DOH from the same source as discussed in (a) of this subsection, to arrive at the net hospital revenue; then

(d) Divides the amount derived in (b) of this subsection by the amount derived in (c) of this subsection to obtain the ratio of community care dollars to net hospital revenue (also called the preliminary ratable factor); then

(e) Subtracts the amount derived in (d) of this subsection from 1.0 to obtain the hospital's preliminary ratable; then

(f) Determines a neutrality factor by:

(i) Multiplying hospital-specific Medicaid revenue that is reported by DOH from the same source as discussed in (a) of this subsection by the preliminary ratable factor; then

(ii) Multiplying that same hospital-specific Medicaid revenue by the prior year's final ratable factor; then

(iii) Summing all hospital Medicaid revenue from the hospital-specific calculations that used the preliminary ratable factor discussed in (f)(i) of this subsection; then

(iv) Summing all hospital revenue from the hospital-specific calculations that used the prior year's final ratable factor discussed in (f)(ii) of this subsection; then

(v) Comparing the two totals; and

(vi) Setting the neutrality factor at 1.0 if the total using the preliminary ratable factor is less than the total using the prior year's final ratable factor; or

(vii) Establishing a neutrality factor that is less than 1.0 that will reduce the total using the preliminary ratable factor to the level of the total using the prior year's final ratable factor, if the total using the preliminary ratable factor is greater than the total using the prior year's ratable factor; then

(g) Multiplies, for each specific hospital, the preliminary ratable by the neutrality factor to establish hospital-specific final ratables for the year; then

(h) Subtracts each hospital-specific final ratable from 1.0 to determine hospital-specific final ratable factors for the year; then

(i) Calculates an instate-average ratable and an instate-average ratable factor used for new hospitals with no prior year history.

(10) MAA updates each hospital's ratable annually on August 1.

(11) MAA:

(a) Uses the equivalency factor (EF) to hold the hospital specific state-administered programs' DRG CF at the same level prior to rebasing, adjusted for inflation; and

(b) Calculates a hospital's EF as follows:

$$EF = \text{State-administered programs' prior DRG CF} \div \text{current Title XIX Medicaid DRG CBCF} \times (\text{one minus the prior ratable})$$

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-4800, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 74.09.500, 04-19-113, § 388-550-4800, filed 9/21/04, effective 10/22/04. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290, 02-21-019, § 388-550-4800, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652, 01-16-142, § 388-550-4800, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.09.080, 74.09.730, 42 U.S.C. 1395x(v) and 1396r-4, 42 C.F.R. 447.271 and 2652, 99-14-026, § 388-550-4800, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 USC 1395 x(v), 42 CFR 447.271, 447.11303, and 447.2652, 99-06-046, § 388-550-4800, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200,

[74.09.]500, [74.09.]530 and 43.20B.020, 98-01-124, § 388-550-4800, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-4900 Disproportionate share payments.** As required by section 1902 (a)(13)(A) of the Social Security Act, the medical assistance administration (MAA) gives consideration to hospitals that serve a disproportionate number of low-income clients with special needs by making a payment adjustment to eligible hospitals per legislative direction and established prospective payment methods. MAA considers this adjustment a disproportionate share hospital (DSH) payment.

(1) To qualify for a DSH payment for each state fiscal year (SFY), an instate or bordering city hospital provider must submit to MAA, the hospital's completed and final DSH application by the due date specified in that year's application letter. The application due date will not be less than sixty days after MAA makes the application available.

(2) A hospital is a disproportionate share hospital eligible for the low-income disproportionate share hospital (LIDSH) program for a specific SFY if the hospital submits a DSH application for that specific year in compliance with subsection (1) and if both the following apply:

(a) The hospital's Medicaid inpatient utilization rate (MIPUR) is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, or its low-income utilization rate (LIUR) exceeds twenty-five percent; and

(b) At least two obstetricians who have staff privileges at the hospital have agreed to provide obstetric services to eligible individuals at the hospital. For the purpose of establishing DSH eligibility, "obstetric services" is defined as routine nonemergency delivery of babies. This requirement for two obstetricians with staff privileges does not apply to a hospital:

(i) That provides inpatient services predominantly to individuals under eighteen years of age; or

(ii) That did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(3) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(4) MAA may consider a hospital a disproportionate share hospital for programs other than the LIDSH program if the hospital submits a DSH application for the specific year and meets the following criteria for the year specified in the application:

(a) The hospital has a MIPUR of not less than one percent; and

(b) The hospital meets the requirement of subsection (2)(b) of this section.

(5) MAA administers the low-income disproportionate share (LIDSH) program and may administer any of the following DSH programs:

(a) General assistance-unemployable disproportionate share hospital (GAUDSH);

(b) Small rural hospital assistance program disproportionate share hospital (SRHAPDSH);

(c) Small rural hospital indigent adult assistance program disproportionate share hospital (SRHIAAPDSH);

(d) Nonrural hospital indigent adult assistance program disproportionate share hospital (NRHIAAPDSH); and

(e) Public hospital disproportionate share hospital (PHDSH).

(6) MAA allows a hospital to receive any one or all of the DSH payment adjustments discussed in subsection (5) of this section when the hospital:

(a) Meets the requirements in subsection (4) of this section; and

(b) Meets the eligibility requirements for the particular DSH payment program, as discussed in WAC 388-550-5000 through 388-550-5400.

(7) MAA ensures each hospital's total DSH payments do not exceed the individual hospital's DSH limit, defined as:

(a) The cost to the hospital of providing services to Medicaid clients, including clients served under Medicaid managed care programs;

(b) Less the amount paid by the state under the non-DSH payment provision of the state plan;

(c) Plus the cost to the hospital of providing services to uninsured patients;

(d) Less any cash payments made by uninsured clients; and

(e) Plus any adjustments required and/or authorized by federal regulation.

(8) MAA's total annual DSH payments must not exceed the state's DSH allotment for the federal fiscal year.

If the MAA statewide allotment is exceeded, MAA may adjust future DSH payments to each hospital to compensate for the amount overpaid. Adjustments will be made in the following program order:

(a) SRHAPDSH;

(b) NRHIAAPDSH;

(c) SRHIAAPDSH;

(d) GAUDSH;

(e) LIDSH; and

(f) PHDSH.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-4900, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090, 74.04.050, and 2003 1st sp.s. c 25. 04-12-044, § 388-550-4900, filed 5/28/04, effective 7/1/04. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290, 03-13-055, § 388-550-4900, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730 and 42 U.S.C. 1396r-4, 99-14-040, § 388-550-4900, filed 6/30/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020, 98-01-124, § 388-550-4900, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-5210 Payment method—SRHIAAPDSH.** (1) The medical assistance administration (MAA) makes small rural hospital indigent adult assistance program disproportionate share hospital (SRHIAAPDSH) payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an SRHIAAPDSH payment, a hospital must:

(a) Meet the criteria in WAC 388-550-4900 (2)(b) and (4);

(b) Be an in-state hospital that provided charity services to clients during the most recent, completed fiscal year;

(c) Be a small rural hospital with fewer than seventy-five acute licensed beds; and

(d) For state fiscal year (SFY) beginning July 1, 2003, be located in a city or town that has a nonstudent population of fifteen thousand eight hundred ten or less. For each subsequent SFY, the nonstudent population requirement is increased cumulatively by two percent.

(3) MAA pays hospitals qualifying for SRHIAAPDSH payments from a legislatively appropriated pool. MAA determines each hospital's individual SRHIAAPDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the SRHIAAPDSH payment is to be made, MAA calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) MAA determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) MAA:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of revised costs by dividing its revised cost amount by the sum of the revised charity cost amounts for all qualifying hospitals during the same period.

(4) MAA's SRHIAAPDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for that hospital unless an exception is identified by federal regulation. MAA reallocates dollars as defined in the state plan.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-5210, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090, 74.04.050, and 2003 1st sp.s. c 25. 04-12-044, § 388-550-5210, filed 5/28/04, effective 7/1/04.]

**WAC 388-550-5220 Payment method—NRHIAAPDSH.** (1) The medical assistance administration (MAA) makes nonrural hospital indigent adult assistance program disproportionate share hospital (NRHIAAPDSH) payments to qualifying nonrural hospitals through the disproportionate share (DSH) program.

(2) To qualify for an NRHIAAPDSH payment, a hospital must:

(a) Meet the criteria in WAC 388-550-4900 (2)(b) and (4);

(b) Be an in-state or bordering city hospital that provided charity services to clients during the most recent, completed fiscal year; and

(c) Be a hospital that does not qualify as a small rural hospital as defined in WAC 388-550-5210.

(3) MAA pays hospitals qualifying for NRHIAAPDSH payments from a legislatively appropriated pool. MAA deter-

mines each hospital's individual NRHIAAPDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the NRHIAAPDSH payment is to be made, MAA calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) MAA determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) MAA:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of the NRHIAAPDSH revised costs by dividing the hospital's revised cost amount by the total charity costs for all qualifying hospitals during the same period.

(4) MAA's NRHIAAPDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for the hospital unless an exception is identified by federal regulation. MAA reallocates dollars as defined in the state plan.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-5220, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090, 74.04.050, and 2003 1st sp.s. c 25. 04-12-044, § 388-550-5220, filed 5/28/04, effective 7/1/04.]

#### **WAC 388-550-5400 Payment method—PHDSH.** (1)

The medical assistance administration's (MAA's) public hospital disproportionate share hospital (PHDSH) program is a public hospital program for:

(a) Public hospitals located in the state of Washington that are:

(i) Owned by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(2) MAA pays hospitals eligible under this program a payment equal to the hospital's individual disproportionate share hospital (DSH) payment limit calculated according to WAC 388-550-4900. The resulting amount is multiplied by the federal matching assistance percentage in effect for Washington State at the time of the payment. This amount is sent to the hospital.

(3) Hospitals receiving payment in this DSH program must certify that funds have been spent on uncompensated care at the hospital equal to or in excess of the payment amount before applying the federal matching assistance percentage. Certified funds cannot include federal funds or money used to match federal funds.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-5400, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290, 03-13-055, § 388-550-5400, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4, 99-14-025, § 388-550-5400, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020, 98-01-124, § 388-550-5400, filed 12/18/97, effective 1/18/98.]

**WAC 388-550-6800 Proportionate share payments for inpatient hospital services.** (1) Each state fiscal year, per legislative direction and established prospective payment methods, the department creates a proportionate share pool that provides supplemental payments for inpatient hospital services to a hospital provider of Title XIX Medicaid services that is classified as either a:

(a) Washington state-owned or state-operated hospital; or

(b) Nonstate government-owned hospital.

(2) Prior to payment, proportionate share payments for inpatient hospital services are subject to:

(a) Federal approval for federal matching funds;

(b) A department analysis of the Medicare upper limit; and

(c) The federal Medicare upper payment limit for hospital payment.

(3) The medical assistance administration (MAA) determines each payment year's total proportionate share payment for inpatient hospital services by:

(a) Using the charge and payment data from MAA's Medicaid Management Information System (MMIS) for inpatient hospital services for the base years; and

(b) Calculating the cumulative difference between covered Title XIX inpatient charges, Title XIX payments, and third party liability payments for all eligible hospitals during the most recent federal fiscal year.

(4) Proportionate share payments for inpatient hospital services:

(a) Are determined and paid periodically to participating eligible hospitals during each federal fiscal year; and

(b) Must be used to improve health care services to low income patients.

[Statutory Authority: RCW 74.04.050, 74.08.090, 05-12-132, § 388-550-6800, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290, 03-13-055, § 388-550-6800, filed 6/12/03, effective 7/13/03.]

### **Chapter 388-551 WAC**

#### **ALTERNATIVES TO HOSPITAL SERVICES**

##### **WAC**

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388-551-1850	Pediatric palliative care (PPC) case management/coordination services—Rates methodology.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-551-1315	Example of how hospice client certifications (election periods) work. [Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1315, filed 4/9/99, effective 5/10/99.] Repealed by 05-18-033, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.08.090, 74.09.520.
388-551-1410	Hospice providers must notify institutional providers. [Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1410, filed 4/9/99, effective 5/10/99.] Repealed by 05-18-033, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.08.090, 74.09.520.

#### WAC 388-551-1000 Hospice program—General. (1)

The department's hospice program is a twenty-four hour a day program that allows a terminally ill client to choose physical, pastoral/spiritual, and psychosocial comfort care rather than cure. A hospice interdisciplinary team communicates with the client's nonhospice care providers to ensure the client's needs are met through the hospice plan of care. Hospitalization is used only for acute symptom management.

(2) A client, a physician, or an authorized representative under RCW 7.70.065 may initiate hospice care. The client's physician must certify the client as terminally ill and appropriate for hospice care.

(3) Hospice care is provided in a client's temporary or permanent place of residence.

(4) Hospice care ends when:

(a) The client or an authorized representative under RCW 7.70.065 revokes the hospice care;

(b) The hospice agency discharges the client;

(c) The client's physician determines hospice care is no longer appropriate; or

(d) The client dies.

(5) Hospice care includes the provision of emotional and spiritual comfort and bereavement support to the client's family member(s).

(6) Department-approved hospice agencies must meet the general requirements in chapter 388-502 WAC, Administration of medical programs—Providers.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1000, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1000, filed 4/9/99, effective 5/10/99.]

#### WAC 388-551-1010 Hospice program—Definitions.

The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this subchapter.

**"Authorized representative"** means an individual who has been authorized to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated. See RCW 7.70.065.

**"Biologicals"** means medicinal preparations including serum, vaccine autotoxins, and biotechnological drugs made from living organisms and their products.

**"Brief period"** means six days or less within a thirty consecutive-day period.

**"Community services office (CSO)"** means an office of the department that administers social and health services at the community level.

**"Discharge"** means an agency ends hospice care for a client.

**"Election period"** means the time, ninety or sixty days, that the client is certified as eligible for and chooses to receive hospice care.

**"Family"** means an individual or individuals who are important to, and designated in writing by, the client and need not be relatives, or who are legally authorized to represent the client.

**"Home and community services (HCS) office"** means an aging and disability services administration (ADSA) office that manages the state's comprehensive long-term care system which provides in-home, residential, and nursing home services to clients with functional disabilities.

**"Home health aide"** means an individual registered or certified as a nursing assistant under chapter 18.88A RCW who, under the direction and supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist, assists in the delivery of nursing or therapy related activities, or both, to patients of a hospice agency, or hospice care center.

**"Home health aide services"** means services provided by home health aides employed by an in-home services agency licensed to provide home health, hospice, or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in client's conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.

**"Hospice agency"** means a person or entity administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and volunteer. (Note: For the purposes of this subchapter, requirements for hospice agencies also apply to hospice care centers.)

**"Hospice care center"** means a homelike noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280 and applicable rules.

**"Hospice services"** means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and individual's family in a place of temporary or permanent residence.

**"Interdisciplinary team"** means the group of individuals involved in client care providing hospice services or hospice care center services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor, and volunteer.

**"Palliative"** means medical treatment designed to reduce pain or increase comfort, rather than cure.

**"Plan of care"** means a written document based on assessment of client needs that identifies services to meet these needs.

**"Related condition(s)"** means any health condition(s) that manifests secondary to or exacerbates symptoms associated with the progression of the condition and/or disease, the treatment being received, or the process of dying. (Examples of related conditions: Medication management of nausea and vomiting secondary to pain medication; skin breakdown prevention/treatment due to peripheral edema.)

**"Residence"** means a client's home or place of living.

**"Revoke" or "revocation"** means the choice to stop receiving hospice care.

**"Terminally ill"** means the client has a life expectancy of six months or less, assuming the client's disease process runs its natural course.

**"Twenty-four-hour day"** means a day beginning and ending at midnight.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1010, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1010, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1200 Client eligibility for hospice care.** (1) A client who elects to receive hospice care must be eligible for one of the following medical assistance programs, subject to the restrictions and limitations in this chapter and other WAC:

- (a) Categorically needy program (CNP);
- (b) Limited casualty program - medically needy program (LCP-MNP);
- (c) Children's health (V);
- (d) State children's health insurance program (SCHIP);
- (e) CNP—Alien emergency medical;
- (f) LCP-MNP—Alien emergency medical; or
- (g) General assistance-expedited disability (GAX).

(2) A hospice agency is responsible to verify a client's eligibility with the client or the client's home and community services (HCS) office or community services office (CSO).

(3) A client enrolled in one of the department's managed care plans must receive all hospice services, including facility room and board, directly through that plan. The client's managed care plan is responsible for arranging and providing all hospice services for a client enrolled in a managed care plan.

(4) A client who is also eligible for Medicare part A is not eligible for hospice care through the department's hospice program. The department does pay hospice nursing facility room and board for these clients if the client is admitted to a nursing facility or hospice care center (HCC) and is not

receiving general inpatient care or inpatient respite care. See also WAC 388-551-1530.

(5) A client who meets the requirements in this section is eligible to receive hospice care through the department's hospice program when all of the following is met:

(a) The client's physician certifies the client has a life expectancy of six months or less.

(b) The client elects to receive hospice care and agrees to the conditions of the "election statement" as described in WAC 388-551-1310.

(c) The hospice agency serving the client:

(i) Notifies the department's hospice program within five working days of the admission of all clients, including:

- (A) Medicaid-only clients;
- (B) Medicaid-Medicare dual eligible clients;
- (C) Medicaid clients with third party insurance; and
- (D) Medicaid-Medicare dual eligible clients with third party insurance.

(ii) Meets the hospice agency requirements in WAC 388-551-1300 and 388-551-1305.

(d) The hospice agency provides additional information for a diagnosis when the department requests and determines, on a case-by-case basis, the information that is needed for further review.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1200, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1200, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1210 Covered services, including core services and supplies reimbursed through the hospice daily rate.** (1) The department reimburses a hospice agency for providing covered services, including core services and supplies described in this section, through the department's hospice daily rate, subject to the conditions and limitations described in this section and other WAC.

(2) To qualify for reimbursement, covered services, including core services and supplies in the hospice daily rate, must be:

- (a) Related to the client's hospice diagnosis;
- (b) Identified by the client's hospice interdisciplinary team;
- (c) Written in the client's plan of care (POC); and
- (d) Made available to the client by the hospice agency on a twenty-four hour basis.

(3) The hospice daily rate includes the following core services that must be either provided by hospice agency staff, or contracted through a hospice agency, if necessary, to supplement hospice staff in order to meet the needs of a client during a period of peak patient loads or under extraordinary circumstances:

(a) Physician services related to the administration of POC.

(b) Nursing care provided by:

- (i) A registered nurse (RN); or
- (ii) A licensed practical nurse (LPN) under the supervision of an RN.

(c) Medical social services provided by a social worker under the direction of a physician.

(d) Counseling services provided to a client and the client's family members or caregivers.

(4) Covered services and supplies may be provided by a service organization or an individual provider when contracted through a hospice agency. To be reimbursed the hospice daily rate, a hospice agency must:

(a) Assure all contracted staff meets the regulatory qualification requirements;

(b) Have a written agreement with the service organization or individual providing the services and supplies; and

(c) Maintain professional, financial, and administrative responsibility.

(5) The following covered services and supplies are included in the appropriate hospice daily rate as described in WAC 388-551-1510(6), subject to the conditions and limitations described in this section and other WAC:

(a) Skilled nursing care;

(b) Drugs, biologicals, and over-the-counter medications used for the relief of pain and symptom control of a client's terminal illness and related conditions;

(c) Communication with nonhospice providers about care not related to the client's terminal illness to ensure the client's plan of care needs are met and not compromised;

(d) Medical equipment and supplies that are medically necessary for the palliation and management of a client's terminal illness and related conditions;

(e) Home health aide, homemaker, and/or personal care services that are ordered by a client's physician and documented in the POC. (Home health aide services are provided through the hospice agency to meet a client's extensive needs due to the client's terminal illness. These services must be provided by a qualified home health aide and are an extension of skilled nursing or therapy services. See 42 CFR 484.36);

(f) Physical therapy, occupational therapy, and speech-language therapy to manage symptoms or enable a client to safely perform ADLs (activities of daily living) and basic functional skills;

(g) Medical transportation services;

(h) A brief period of inpatient care, for general or respite care provided in a Medicare-certified hospice care center, hospital, or nursing facility; and

(i) Other services or supplies that are documented as necessary for the palliation and management of a client's terminal illness and related conditions;

(6) A hospice agency is responsible to determine if a nursing facility has requested authorization for medical supplies or medical equipment, including wheelchairs, for a client who becomes eligible for the hospice program. The department does not pay separately for medical equipment or supplies that were previously authorized by the department and delivered on or after the date the department enrolls the client in the hospice program.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1210, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1210, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1300 Requirements for a department-approved hospice agency.** (1) To become a department-approved hospice agency, the department requires a hospice agency to provide documentation that it is Medicare, Title XVIII certified by the department of health (DOH) as a hospice agency.

(2) A department-approved hospice agency must at all times meet the requirements in chapter 388-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII Medicare Program.

(3) To ensure quality of care for medical assistance clients, the department's clinical staff may conduct hospice agency site visits.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1300, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1300, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1305 Requirements for becoming a department-approved hospice care center (HCC).** (1) To apply to become a department-approved hospice care center, the department requires a hospice agency to:

(a) Be enrolled with the department as a department hospice agency (see WAC 388-551-1300);

(b) Submit a letter of request to:

Hospice Program Manager  
Division of Medical Management  
Department of Social and Health Services  
PO Box 45506  
Olympia, WA 98504-5506; and

(c) Include documentation that confirms the agency is Medicare certified by department of health (DOH) as a hospice care center and provides one or more of the following levels of hospice care (levels of care are described in WAC 388-551-1500):

(i) Routine home care;

(ii) Inpatient respite care; and

(iii) General inpatient care.

(2) A department-approved hospice care center must at all times meet the requirements in chapter 388-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII Medicare Program.

(3) A hospice agency qualifies as a department-approved hospice care center when:

(a) All the requirements in this section are met; and

(b) The department provides the hospice agency with written notification.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1305, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1310 Hospice election periods, election statements, and the hospice certification process.** (1) Hospice coverage is available for two ninety-day election periods followed by an unlimited number of sixty-day election periods. A client or a client's authorized representative must sign an election statement to initiate or reinstate an election period for hospice care.

(2) The election statement must be filed in the client's hospice medical record within two calendar days following the day the hospice care begins and requires all of the following:

(a) Name and address of the hospice agency that will provide the care;

(b) Documentation that the client is fully informed and understands hospice care and waiver of other Medicaid and/or Medicare services;

(c) Effective date of the election; and  
 (d) Signature of the client or the client's authorized representative.

(3) The following describes the hospice certification process:

(a) When a client elects to receive hospice care, the department requires a hospice agency to:

(i) Obtain a signed written certification of the client's terminal illness; or

(ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by:

(A) The medical director of the hospice agency or a physician staff member of the interdisciplinary team; and

(B) The client's attending physician (if the client has one).

(iii) Place the signed written certification of the client's terminal illness in the client's medical file:

(A) Within sixty days following the day the hospice care begins; and

(B) Before billing the department for the hospice services.

(b) For subsequent election periods, the department requires the hospice agency to:

(i) Obtain a signed written certification statement of the client's terminal illness; or

(ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by the medical director of the hospice agency or a physician staff member of the hospice agency; and

(iii) Place the written certification of the client's terminal illness in the client's medical file:

(A) Within two calendar days following the beginning of a subsequent election period; and

(B) Before billing the department for the hospice services.

(4) When a client's hospice coverage ends within an election period (e.g., the client revokes hospice care), the remainder of that election period is forfeited. The client may reinstate the hospice benefit at any time by providing an election statement and meeting the certification process requirements.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1310, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1310, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1320 Hospice plan of care.** (1) A hospice agency must establish a written plan of care (POC) for a client that describes the hospice care to be provided. The POC must be in accordance with department of health (DOH) requirements as described in WAC 246-335-085, and meet the requirements in this section.

(2) A registered nurse or physician must conduct an initial physical assessment of a client and develop the POC with at least one other member of the hospice interdisciplinary team.

(3) At least two other hospice interdisciplinary team members must review the POC no later than two working days after it is developed.

(4) The POC must be reviewed and updated every two weeks by at least three members of the hospice interdisciplinary team that includes at least:

(a) A registered nurse;

(b) A social worker; and

(c) One other hospice interdisciplinary team member.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1320, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1320, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1330 Hospice—Client care and responsibilities of hospice agencies.** (1) A hospice agency must facilitate a client's continuity of care with nonhospice providers to ensure that medically necessary care, both related and not related to the terminal illness, is met. This includes:

(a) Determining if the department has approved a request for prescribed medical equipment, such as a wheelchair. If the prescribed item is not delivered to the client before the client becomes covered by a hospice agency, the department will rescind the approval. See WAC 388-543-1500.

(b) Communicating with other department programs and documenting the services a client is receiving in order to prevent duplication of payment and to ensure continuity of care. Other department programs include, but are not limited to, programs administered by the aging and disability services administration (ADSA).

(c) Documenting each contact with nonhospice providers.

(2) When a client resides in a nursing facility, the hospice agency must:

(a) Coordinate the client's care with all providers, including pharmacies and medical vendors; and

(b) Provide the same level of hospice care the hospice agency provides to a client residing in their home.

(3) Once a client chooses hospice care, hospice agency staff must notify and inform the client of the following:

(a) By choosing hospice care from a hospice agency, the client gives up the right to:

(i) Covered Medicaid hospice service and supplies received at the same time from another hospice agency; and

(ii) Any covered Medicaid services and supplies received from any other provider that are necessary for the palliation and management of the terminal illness and related medical conditions.

(b) Services and supplies are not paid through the hospice daily rate if they are:

(i) Proven to be clinically unrelated to the palliation and management of the client's terminal illness and related medical conditions (see WAC 388-551-1210(3));

(ii) Not covered by the hospice daily rate;

(iii) Provided under a Title XIX Medicaid program when the services are similar or duplicate the hospice care services; or

(iv) Not necessary for the palliation and management of the client's terminal illness and related medical conditions.

(4) A hospice agency must have written agreements with all contracted providers.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1330, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520,

74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1330, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1340 When a client leaves hospice without notice.** When a client chooses to leave hospice care or refuses hospice care without giving the hospice agency a revocation statement, as required by WAC 388-551-1360, the hospice agency must do all of the following:

(1) Within five working days of becoming aware of the client's decision, inform and notify in writing the department's hospice program manager (see WAC 388-551-1400 for further requirements);

(2) Complete a Medicaid hospice 5-day notification form (DSHS 13-746) and forward a copy to the appropriate home and community services (HCS) office or community services office (CSO) to notify that the client is discharging from the program;

(3) Notify the client, or the client's authorized representative, that the client's discharge has been reported to the department; and

(4) Document the effective date and details of the discharge in the client's hospice record.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1340, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1340, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1350 Discharges from hospice care.**

(1) A hospice agency may discharge a client from hospice care when the client:

(a) Is no longer certified for hospice care;

(b) Is no longer appropriate for hospice care; or

(c) The hospice agency's medical director determines the client is seeking treatment for the terminal illness outside the plan of care (POC).

(2) At the time of a client's discharge, a hospice agency must:

(a) Within five working days, complete a Medicaid hospice 5-day notification form (DSHS 13-746) and forward to the department's hospice program manager (see WAC 388-551-1400 for additional requirements), and a copy to the appropriate home and community services office (HCS) or community services office (CSO);

(b) Keep the discharge statement in the client's hospice record;

(c) Provide the client with a copy of the discharge statement; and

(d) Inform the client that the discharge statement must be:

(i) Presented with the client's current medical identification (medical ID) card when obtaining Medicaid covered healthcare services or supplies, or both; and

(ii) Used until the department issues the client a new medical ID card that identifies that the client is no longer a hospice client.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1350, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1350, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1360 Ending hospice care (revocations).** (1) A client or a client's authorized representative may

choose to stop hospice care at any time by signing a revocation statement.

(2) The revocation statement documents the client's choice to stop Medicaid hospice care. The revocation statement must include all of the following:

(a) Client's signature (or the client's authorized representative's signature if the client is unable to sign);

(b) Date the revocation was signed; and

(c) Actual date that the client chose to stop receiving hospice care.

(3) The hospice agency must keep any explanation supporting any difference in the signature and revocation dates in the client's hospice records.

(4) When a client revokes hospice care, the hospice agency must:

(a) Within five working days of becoming aware of the client's decision, inform and notify in writing the department's hospice program manager (see WAC 388-551-1400 for additional requirements);

(b) Notify the appropriate home and community services (HCS) office or community services office (CSO) of the revocation by completing and forwarding a copy of the Medicaid hospice 5-day notification form (DSHS 13-746) to the appropriate home and community services (HCS) office or community services office (CSO);

(c) Keep the revocation statement in the client's hospice record;

(d) Provide the client with a copy of the revocation statement; and

(e) Inform the client that the revocation statement must be:

(i) Presented with the client's current medical identification (medical ID) card when obtaining Medicaid covered healthcare services or supplies, or both; and

(ii) Used until the department issues a new medical ID card that identifies that the client is no longer a hospice client.

(5) After a client revokes hospice care, the remaining days within the current election period are forfeited. The client may immediately enter the next consecutive election period. The client does not have to wait for the forfeited days to pass before entering the next consecutive election period.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1360, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1360, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1370 When a hospice client dies.** When a client dies, the hospice agency must:

(1) Within five working days, inform and notify in writing the department's hospice program manager; and

(2) Notify the appropriate home and community services (HCS) office or community services office (CSO) of the client's date of death by completing and forwarding a copy of the Medicaid hospice 5-day notification form (DSHS 13-746) to the appropriate HCS office or CSO.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1370, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1400 Notification requirements for hospice agencies.** (1) To be reimbursed for providing hospice services, the hospice agency must complete a Medicaid

hospice 5-day notification form (DSHS 13-746) and forward to the department's hospice program manager within five working days from when a medical assistance client begins the first day of hospice care, or has a change in hospice status. The hospice agency must notify the department's hospice program of:

- (a) The name and address of the hospice agency;
- (b) The date of the client's first day of hospice care;
- (c) A change in the client's primary physician;
- (d) A client's revocation of the hospice benefit (home or institutional);
- (e) The date a client leaves hospice without notice;
- (f) A client's discharge from hospice care;
- (g) A client who admits to a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care);
- (h) A client who discharges from a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care.);
- (i) A client who is eligible for or becomes eligible for Medicare or third party liability (TPL) insurance;
- (j) A client who dies; or
- (k) A client who transfers to another hospice agency. Both the former agency and current agency must provide the department with:

- (i) The client's name, the name of the former hospice agency servicing the client, and the effective date of the client's discharge; and
- (ii) The name of the current hospice agency serving the client, the hospice agency's provider number, and the effective date of the client's admission.

(2) The department does not require a hospice agency to notify the hospice program manager when a hospice client is admitted to a hospital for palliative care.

(3) When a hospice agency does not notify the department's hospice program within five working days of the date of the client's first day of hospice care as required in subsection (1)(c) of this section, the department authorizes the hospice daily rate reimbursement effective the fifth working day prior to the date of notification.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1400, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1400, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1500 Hospice daily rate—Four levels of hospice care.** All services, supplies and equipment related to the client's terminal illness and related conditions are included in the hospice daily rate. The department pays for only one of the following four levels of hospice care per day (see WAC 388-551-1510 for payment methods):

(1) **Routine home care.** Routine home care includes daily care administered to the client at the client's residence. The services are not restricted in length or frequency of visits, are dependent on the client's needs, and are provided to achieve palliation or management of acute symptoms.

(2) **Continuous home care.** Continuous home care includes acute skilled care provided to an unstable client during a brief period of medical crisis in order to maintain the client in the client's residence and is limited to:

(a) A minimum of eight hours of acute care provided during a twenty-four-hour day;

(b) Nursing care that must be provided by a registered or licensed practical nurse for more than half the period of care;

(c) Homemaker, home health aide, and attendant services that may be provided as supplements to the nursing care; and

(d) In home care only (not care in a nursing facility or a hospice care center).

(3) **Inpatient respite care.** Inpatient respite care includes room and board services provided to a client in a department-approved hospice care center, nursing facility, or hospital. Respite care is intended to provide relief to the client's primary caregiver and is limited to:

(a) No more than six consecutive days; and

(b) A client not currently residing in a hospice care center, nursing facility, or hospital.

(4) **General inpatient hospice care.** General inpatient hospice care includes services administered to a client for pain control or management of acute symptoms. In addition:

(a) The services must conform to the client's written plan of care (POC).

(b) This benefit is limited to brief periods of care in department-approved:

(i) Hospitals;

(ii) Nursing facilities; or

(iii) Hospice care centers.

(b) There must be documentation in the client's medical record to support the need for general inpatient level of hospice care.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1500, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24, 99-09-007, § 388-551-1500, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1510 Rates methodology and payment method for hospice agencies.** This section describes rates methodology and payment methods for hospice care provided to hospice clients.

(1) The department uses the same rates methodology as Medicare uses for the four levels of hospice care identified in WAC 388-551-1500.

(2) Each of the four levels of hospice care has the following three rate components:

(a) Wage component;

(b) Wage index; and

(c) Unweighted amount.

(3) To allow hospice payment rates to be adjusted for regional differences in wages, the department bases payment rates on the Metropolitan Statistical Area (MSA) county location. MSAs are identified in the department's current published billing instructions.

(4) Payment rates for:

(a) Routine and continuous home care services are based on the county location of the client's residence.

(b) Inpatient respite and general inpatient care services are based on the MSA county location of the providing hospice agency.

(5) The department pays hospice agencies for services (not room and board) at a daily rate calculated as follows:

(a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence; or

(b) Payments for respite and general inpatient care are based on the county location of the providing hospice agency.

(6) The department:

(a) Pays for routine hospice care, continuous home care, respite care, or general inpatient care for the day of death;

(b) Does not pay room and board for the day of death; and

(c) Does not pay hospice agencies for the client's last day of hospice care when the last day is for the client's discharge, revocation, or transfer.

(7) Hospice agencies must bill the department for their services using hospice-specific revenue codes.

(8) For hospice clients in a nursing facility:

(a) The department pays nursing facility room and board payments at a daily rate directly to the hospice agency at ninety-five percent of the nursing facility's current Medicaid daily rate in effect on the date the services were provided; and

(b) The hospice agency pays the nursing facility at a daily rate no greater than the nursing facility's current Medicaid daily rate.

(9) The department:

(a) Pays a hospice care center a daily rate for room and board based on the average room and board rate for all nursing facilities in effect on the date the services were provided.

(b) Does not pay hospice agencies or hospice care centers a nursing facility room and board payment for:

(i) A client's last day of hospice care (e.g., client's discharge, revocation, or transfer); or

(ii) The day of death.

(10) The daily rate for authorized out-of-state hospice services is the same as for in-state non-MSA hospice services.

(11) The client's notice of action (award) letter states the amount of participation the client is responsible to pay each month towards the total cost of hospice care. The hospice agency receives a copy of the award letter and:

(a) Is responsible to collect the correct amount of the client's participation if the client has any; and

(b) Must show the client's monthly participation on the hospice claim. (Hospice providers may refer to the department's current published billing instructions for how to bill a hospice claim.) If a client has a participation amount that is not reflected on the claim and the department reimburses the amount to the hospice agency, the amount is subject to recoupment by the department.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1510, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1510, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1520 Payment method for nonhospice providers.** (1) The department pays for hospitals that provide inpatient care to clients in the hospice program for medical conditions not related to their terminal illness according to chapter 388-550 WAC, Hospital services.

(2) The department pays providers who are attending physicians and not employed by the hospice agency, the

usual amount through the resource based relative value scale (RBRVS) fee schedule:

(a) For direct physician care services provided to a hospice client;

(b) When the provided services are not related to the terminal illness; and

(c) When the client's providers, including the hospice agency, coordinate the health care provided.

(3) The department's aging and disability services administration (ADSA) pays for services provided to a client eligible under the community options program entry system (COPES) directly to the COPES provider.

(a) The client's monthly participation amount, if there is one, for services provided under COPES is paid separately to the COPES provider; and

(b) Hospice agencies must bill the department's hospice program directly for hospice services, not the COPES program.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1520, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520, 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1520, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1530 Payment method for Medicaid-Medicare dual eligible clients.** (1) The department does not pay for any hospice care provided to a client covered by Medicare part A (hospital insurance).

(2) The department may pay for hospice care provided to a client:

(a) Covered by Medicaid part B (medical insurance); and

(b) Not covered by Medicare part A.

(3) For hospice care provided to a Medicaid-Medicare dual eligible client, hospice agencies are responsible to bill:

(a) Medicare before billing the department;

(b) The department for hospice nursing facility room and board;

(c) The department for hospice care center room and board; and

(d) Medicare for general inpatient care or inpatient respite care.

(4) All the limitations and requirements related to hospice care described in this subchapter apply to the payments described in this section.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1530, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 74.09.520 and 74.08.090, 42 C.F.R. 418.22 and 418.24. 99-09-007, § 388-551-1530, filed 4/9/99, effective 5/10/99.]

**WAC 388-551-1800 Pediatric palliative care (PPC) case management/coordination services—General.** Through a hospice agency, the department's pediatric palliative care (PPC) case management/coordination services provide the care coordination and skilled care services to clients who have life-limiting medical conditions. Family members and caregivers of clients eligible for pediatric palliative care services may also receive support through care coordination when the services are related to the client's medical needs.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1800, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1810 Pediatric palliative care (PPC) case management/coordination services—Client eligibility.** To receive pediatric palliative care (PPC) case management/coordination services, a person must:

- (1) Be twenty years of age or younger;
- (2) Be a current recipient of the:
  - (a) Categorically needy program (CNP);
  - (b) Limited casualty program - medically needy program (LCP-MNP);
  - (c) CNP—Alien emergency medical;
  - (d) LCP-MNP—Alien emergency medical;
  - (e) Children's health insurance program (SCHIP); and
- (3) Have a life-limiting medical condition that requires case management and coordination of medical services due to at least three of the following circumstances:
  - (a) An immediate medical need during a time of crisis;
  - (b) Coordination with family member(s) and providers required in more than one setting (i.e. school, home, and multiple medical offices or clinics);
  - (c) A life-limiting medical condition that impacts cognitive, social, and physical development;
  - (d) A medical condition with which the family is unable to cope;
  - (e) A family member(s) and/or caregiver who needs additional knowledge or assistance with the client's medical needs; and
  - (f) Therapeutic goals focused on quality of life, comfort, and family stability.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1810, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1820 Pediatric palliative care (PPC) contact—Services included and limitations to coverage.**

(1) The department's pediatric palliative care (PPC) case management/coordination services cover up to six pediatric palliative care contacts per client, per calendar month, subject to the limitations in this section and other applicable WAC.

- (2) One pediatric palliative care contact consists of:
  - (a) One visit with a registered nurse, social worker, or therapist (for the purpose of this section, the department defines therapist as a licensed physical therapist, occupational therapist, or speech/language therapist) with the client in the client's residence to address:
    - (i) Pain and symptom management;
    - (ii) Psychosocial counseling; or
    - (iii) Education/training.
  - (b) Two hours or more per month of case management or coordination services to include any combination of the following:
    - (i) Psychosocial counseling services (includes grief support provided to the client, client's family member(s), or client's caregiver prior to the client's death);
    - (ii) Establishing or implementing care conferences;
    - (iii) Arranging, planning, coordinating, and evaluating community resources to meet the client's needs;
    - (iv) Visits lasting twenty minutes or less (for example, visits to give injections, drop off supplies, or make appointments for other PPC-related services.); and
    - (v) Visits not provided in the client's home.

(3) The department does not pay for a pediatric palliative care contact described in subsection (2) of this section when a client is receiving services from any of the following:

- (a) Home health program;
- (b) Hospice program;
- (c) Private duty nursing (private duty nursing can subcontract with PPC to provide services)/medical intensive care;
- (d) Disease case management program; or
- (e) Any other department program that provides similar services.

(4) The department does not pay for a pediatric palliative care contact that includes providing counseling services to a client's family member or the client's caregiver for grief or bereavement for dates of service after a client's death.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1820, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1830 How to become a department-approved pediatric palliative care (PPC) case management/coordination services provider.** This section applies to department-enrolled providers who currently do not provide pediatric palliative care (PPC) services to medical assistance clients.

(1) To apply to become a department-approved provider of PPC services, a provider must:

- (a) Be a department-approved hospice agency (see WAC 388-551-1300 and 388-551-1305); and
- (b) Submit a letter to the department's hospice/PPC program manager requesting to become a department-approved provider of PPC and include a copy of the provider's policies and position descriptions with minimum qualifications specific to pediatric palliative care.

(2) A hospice agency qualifies to provide PPC services when:

- (a) All the requirements in this section are met; and
- (b) The department provides the hospice agency with written notification.

[Statutory Authority: RCW 74.08.090, 74.09.520. 05-18-033, § 388-551-1830, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1840 Pediatric palliative care (PPC) case management/coordination services—Provider requirements.** (1) An eligible provider of pediatric palliative care (PPC) case management/coordination services must do all of the following:

- (a) Meet the conditions in WAC 388-551-1300;
- (b) Confirm that a client meets the eligibility criteria in WAC 388-551-1810 prior to providing the pediatric palliative care services;
- (c) Place in the client's medical record a written order for PPC from the client's physician;
- (d) Determine and document in the client's medical record the medical necessity for the initial and ongoing care coordination of pediatric palliative care services;
- (e) Document in the client's medical record:
  - (i) A palliative plan of care (POC) (a written document based on assessment of a client's individual needs that identifies services to meet those needs).
  - (ii) The medical necessity for those services to be provided in the client's residence; and



(iii) Discharge planning.

(f) Provide medically necessary skilled interventions and psychosocial counseling services by qualified interdisciplinary hospice team members;

(g) Assign and make available a PPC case manager (nurse, social worker or therapist) to implement care coordination with community-based providers to assure clarity, effectiveness, and safety of the client's POC;

(h) Complete and fax the pediatric palliative care (PPC) referral and 5-day notification form (DSHS 13-752) to the department's PPC program manager within five working days from date of occurrence of the client's:

(i) Date of enrollment in PPC.

(ii) Discharge from the hospice agency or PPC program when the client:

(A) No longer meets PPC criteria;

(B) Is able to receive all care in the community;

(C) Does not require any services for sixty days; or

(D) Discharges from the PPC program and enrolls in the department's hospice program.

(iii) Transfer to another hospice agency for pediatric palliative care services.

(iv) Death.

(i) Maintain the client's file which includes the POC, visit notes, and all of the following:

(i) The client's start of care date and dates of service;

(ii) Discipline and services provided (in-home or place of service);

(iii) Case management activity and documentation of hours of work; and

(iv) Specific documentation of the client's response to the palliative care and the client's and/or client's family's response to the effectiveness of the palliative care (e.g. the client might have required acute care or hospital emergency room visits without the pediatric palliative care services).

(j) Provide when requested by the department's PPC program manager, a copy of the client's POC, visit notes, and any other documents listing the information identified in subsection (1)(i) of this section.

(2) If the department determines the POC, visit notes, and/or other required information do not meet the criteria for a client's PPC eligibility or does not justify the billed amount, any payment to the provider is subject to recoupment by the department.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1840, filed 8/30/05, effective 10/1/05.]

**WAC 388-551-1850 Pediatric palliative care (PPC) case management/coordination services—Rates methodology.** (1) The department determines the reimbursement rate for a pediatric palliative care (PPC) contact described in WAC 388-551-1820 using the average of statewide metropolitan statistical area (MSA) home health care rates for skilled nursing, physical therapy, speech-language therapy and occupational therapy.

(2) The department makes adjustments to the reimbursement rate for PPC contacts when the legislature grants a vander rate change. New rates become effective as directed by the legislature and are effective until the next rate change.

(3) The reimbursement rate for authorized out-of-state PPC services is the same as the in-state non-MSA rate.

[Statutory Authority: RCW 74.08.090, 74.09.520, 05-18-033, § 388-551-1850, filed 8/30/05, effective 10/1/05.]

## Chapter 388-554 WAC

### ENTERAL NUTRITION PROGRAM

#### WAC

388-554-100	Enteral nutrition program—General.
388-554-200	Enteral nutrition program—Definitions.
388-554-300	Enteral nutrition program—Client eligibility.
388-554-400	Enteral nutrition program—Provider requirements.
388-554-500	Orally administered enteral nutrition products—Coverage, limitations, and reimbursement.
388-554-600	Tube-delivered enteral nutrition products and related equipment and supplies—Coverage, limitations, and reimbursement.
388-554-700	Enteral nutrition products and supplies—Prior authorization requirements.
388-554-800	Enteral nutrition program requirements for WIC program-eligible clients.

**WAC 388-554-100 Enteral nutrition program—General.** The medical assistance administration's (MAA's) enteral nutrition program covers the products, equipment, and supplies to provide medically necessary enteral nutrition to eligible medical assistance clients.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-100, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-200 Enteral nutrition program—Definitions.** The following terms and definitions and those found in WAC 388-500-0005 apply to the enteral nutrition program:

**"BMI"** see **"body mass index."**

**"Body mass index (BMI)"** is a number that shows body weight adjusted by height, and is calculated using inches and pounds or meters and kilograms.

**"Enteral nutrition"** means the use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral nutritional solutions can be given orally or via feeding tubes.

**"Enteral nutrition equipment"** means durable medical feeding pumps and intravenous (IV) poles used in conjunction with nutrition supplies to dispense formula to a client.

**"Enteral nutrition product"** means enteral nutrition formulas and/or products.

**"Enteral nutrition supplies"** means the supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

**"Growth chart"** is a series of percentile curves that illustrate the distribution of select body measurements (i.e., height, weight, and age) in children published by the Centers for Disease Control and Prevention, National Center for Health Statistics. CDC growth charts: United States. <http://www.cdc.gov/growthcharts/>

**"Nonfunctioning digestive tract"** is caused by a condition that affects the body's alimentary organs and their ability to break down and digest nutrients.

**"Orally administered enteral nutrition products"** means enteral nutrition solutions and products that a client consumes orally for nutritional support.

**"Tube-delivery"** means the provision of nutritional requirements through a tube into the stomach or small intestine.

**"WIC program"** (Women, infants and children (WIC) program) is a special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five, and low-income pregnant and breastfeeding women who are at nutritional risk by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.

**"Women, infants and children (WIC) program."** See **"WIC program."**

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-200, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-300 Enteral nutrition program—Client eligibility.** (1) Clients in the following medical assistance programs are eligible to receive oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies, subject to the limitations in this chapter and other applicable WAC:

- (a) Categorically needy program (CNP);
- (b) Children's health insurance program (CHIP) (same scope of coverage as CNP);
- (c) General assistance - Unemployable (GA-U);
- (d) Limited casualty program - Medically needy program (LCP-MNP);
- (e) Alien emergency medical program - CNP; and
- (f) Alien emergency medical program - LCP-MNP.

(2) All clients younger than age twenty-one must be evaluated by a certified dietitian with a current provider number within thirty days of initiation of enteral nutrition products, and periodically (at the discretion of the certified dietitian) while receiving enteral nutrition products. See WAC 388-554-400 (2)(h) for provider requirements.

(3) Clients enrolled in an MAA managed care plan are eligible for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies through that plan. If a client becomes enrolled in a managed care plan before MAA completes the purchase (or rental, if applicable) of prescribed enteral products, necessary equipment and supplies:

- (a) MAA rescinds the purchase until the managed care primary care provider (PCP) evaluates the client; and
- (b) The managed care plan's applicable reimbursement policies apply to the purchase of the products, equipment, or supplies, or rental of the equipment, as applicable.

(4) To receive orally administered enteral nutrition products, a client must:

- (a) Have a valid written physician order from a physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C) for all enteral nutrition products;
- (b) When required, have the provider obtain prior authorization as described in WAC 388-554-700;
- (c) Meet the conditions in this section and other applicable WAC;
- (d) Be able to manage their feedings in one of the following ways:
  - (i) Independently; or

- (ii) With a caregiver who can manage the feedings; and
- (e) Have at least one of the following medical conditions, subject to the criteria listed:

- (i) Malnutrition/malabsorption as a result of a stated primary diagnosed disease. The client must have:

- (A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three; or

- (B) A body mass index (BMI) of:

- (I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

- (II) Less than or equal to 18.5 if the client is age eighteen or older.

- (ii) Acquired immune deficiency syndrome (AIDS). The client must be in a wasting state and have:

- (A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three; or

- (B) A BMI of:

- (I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

- (II) Less than or equal to 18.5 if the client is age eighteen or older.

- (iii) Amino acid, fatty acid, and carbohydrate metabolic disorders;

- (iv) Dysphagia. The client must:

- (A) Need to transition from tube feedings to oral feedings or require thickeners to aid swallowing; and

- (B) Be evaluated by:

- (I) A speech therapist; or

- (II) An occupational therapist who specializes in dysphagia.

- (v) Chronic renal failure. The client:

- (A) Must be receiving dialysis; and

- (B) Have a fluid restrictive diet in order to use nutrition bars.

- (vi) Malignant cancer(s). The client must be receiving chemotherapy.

- (vii) Decubitus pressure ulcers. The client must have:

- (A) Stage three or greater decubitus pressure ulcers; and

- (B) An albumin level of 3.2 or below.

- (viii) Failure to thrive. The client must have a disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment. In addition, the client must have:

- (A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three;

- (B) A BMI of less than or equal to the fifth percentile if the client is at least age three but younger than age eighteen; and

- (C) A BMI of less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen or older.

- (5) A client is eligible to receive delivery of orally administered enteral nutrition products in quantities sufficient to meet the client's medically authorized needs, not to exceed a one-month supply. To receive the next month's delivery of authorized products, the client's record must show documentation of the need to refill the products. See WAC 388-554-400 for provider requirements.

- (6) To receive tube-delivered enteral nutrition products, necessary equipment and supplies, a client must:

- (a) Have a valid written physician order from a physician, ARNP, or PA-C;
- (b) Meet the conditions in this section and other applicable WAC; and
- (c) Be able to manage their tube feedings in one of the following ways:
  - (i) Independently; or
  - (ii) With a caregiver who can manage the feedings; and
  - (d) Have at least one of the following medical conditions, subject to the criteria listed:
    - (i) A nonfunction or disease of the structures that normally permit food to reach the small bowel; or
    - (ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-300, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-400 Enteral nutrition program—Provider requirements.** (1) A provider of all oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies must:

- (a) Have a current core provider agreement with the medical assistance administration (MAA); and
- (b) Be one of the following provider types:
  - (i) Pharmacy provider; or
  - (ii) Durable medical equipment (DME) provider.
- (2) To be paid for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies, an eligible provider must:
  - (a) Meet the requirements in WAC 388-502-0020 and other applicable WAC;
  - (b) Obtain prior authorization (PA), if required, before delivery to the client and before billing MAA. See WAC 388-554-700 for PA requirements;
  - (c) Deliver orally administered enteral nutrition products in quantities sufficient to meet a client's medically authorized needs, not to exceed a one-month supply;
  - (d) Bill MAA for the authorized products and submit a claim for payment to MAA with a date of service being the same as the shipping date;
  - (e) Confirm with the client and document in the client's record that the next month's delivery of authorized orally administered enteral nutrition products is necessary (see WAC 388-554-300(5)). MAA will not reimburse automatic periodic delivery of products;
  - (f) Notify and inform the client's physician if the client has indicated the product is not being used as prescribed;
  - (g) Keep legible, accurate, and complete charts in the client's record to justify the medical necessity of the items provided and include:
    - (i) For each item billed, a copy of the prescription. The prescription must:
      - (A) Be signed and dated by the prescribing physician;
      - (B) List the client's medical condition and exact daily caloric amount of needed enteral product; and
      - (C) State the reason why the client is unable to consume enough traditional food to meet nutritional requirements.

- (ii) The medical reason the specific enteral product, equipment, and/or supply is prescribed; and
- (iii) For a client who meets the women, infants and children (WIC) program's target population as defined in WAC 388-554-200, verification from the WIC program that the client:
  - (A) Is not eligible for WIC program services;
  - (B) Is eligible for WIC program services, but nutritional needs exceed the WIC program's maximum per calendar month allotment; or
  - (C) The WIC program cannot provide the prescribed product.
- (h) For a client younger than age twenty-one, retain a copy of each required certified dietitian evaluation, as described in WAC 388-554-300(2).
- (3) MAA may recoup any payment made to a provider for authorized enteral nutrition products if the requirements in subsection (2) of this section and other applicable WAC are not met.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-400, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-500 Orally administered enteral nutrition products—Coverage, limitations, and reimbursement.** (1) The enteral nutrition program covers and reimburses medically necessary orally administered enteral nutrition products, subject to:

- (a) Prior authorization requirements under WAC 388-554-700;
- (b) Duration periods determined by the medical assistance administration (MAA);
- (c) Delivery requirements under WAC 388-554-400(2); and
- (d) The provisions in other applicable WAC.
- (2) Except as provided in subsection (3) of this section, MAA does not pay separately for orally administered enteral nutrition products:
  - (a) When a client resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).
  - (b) When a client has elected and is eligible to receive MAA's hospice benefit, unless both of the following apply:
    - (i) The client has a pre-existing medical condition that requires enteral nutritional support; and
    - (ii) The pre-existing medical condition is not related to the diagnosis that qualifies the client for hospice.
- (3) MAA pays separately for a client's orally administered enteral nutrition products when the client:
  - (a) Resides in the nursing facility;
  - (b) Meets the criteria in WAC 388-554-300; and
  - (c) Needs enteral nutrition products to meet one hundred percent of the client's nutritional needs.
- (4) MAA does not cover or reimburse for orally administered enteral nutrition products when the client's nutritional need can be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blended and used to meet the client's caloric and nutritional needs.

## (5) MAA:

- (a) Determines reimbursement for oral enteral nutrition products according to a set fee schedule;
  - (b) Considers Medicare's current fee schedule when determining maximum allowable fees;
  - (c) Considers vendor rate increases or decreases as directed by the Legislature; and
  - (d) Evaluates and updates the maximum allowable fees for oral enteral nutrition products at least once per year.
- (6) MAA evaluates a request for orally administered enteral nutrition products that are not covered or are in excess of the enteral nutrition program's limitations or restrictions, according to WAC 388-501-0165.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-500, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-600 Tube-delivered enteral nutrition products and related equipment and supplies—Coverage, limitations, and reimbursement.** (1) The enteral nutrition program covers and reimburses the following, subject to the limitations listed in this section and the provisions in other applicable WAC:

- (a) Tube-delivered enteral nutrition products;
  - (b) Tube-delivery supplies;
  - (c) Enteral nutrition pump rental and purchase;
  - (d) Nondisposable intravenous (IV) poles required for enteral nutrition product delivery; and
  - (e) Repairs to equipment.
- (2) The medical assistance administration (MAA) covers up to twelve months of rental payments for enteral nutrition equipment. After twelve months of rental, MAA considers the equipment to be purchased and it becomes the client's property.
- (3) MAA requires a provider to furnish clients new or used equipment that includes full manufacturer and dealer warranties for one year.
- (4) MAA covers only one:
- (a) Purchased pump per client in a five year period; and
  - (b) Purchased nondisposable IV pole per a client's lifetime.
- (5) MAA's reimbursement for covered enteral nutrition equipment and necessary supplies includes all of the following:

- (a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery. This does not apply to adjustments required because of changes in the client's medical condition;
  - (b) Fitting and set-up; and
  - (c) Instruction to the client or the client's caregiver in the appropriate use of the equipment and necessary supplies.
- (6) A provider is responsible for any costs incurred to have another provider repair equipment if all of the following apply:
- (a) Any equipment that MAA considers purchased requires repair during the applicable warranty period;
  - (b) The provider is unable to fulfill the warranty; and
  - (c) The client still needs the equipment.
- (7) If the rental equipment must be replaced during the warranty period, MAA recoups fifty percent of the total amount previously paid toward rental and eventual purchase

of the equipment delivered to the client. All of the following must apply:

- (a) The provider is unable to fulfill the warranty; and
  - (b) The client still needs the equipment.
- (8) MAA rescinds any authorization for prescribed equipment if the equipment was not delivered to the client before the client:
- (a) Loses medical eligibility;
  - (b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);
  - (c) Becomes eligible for an MAA managed care plan; or
  - (d) Dies.
- (9) Except as provided in subsection (10) of this section, MAA does not pay separately for tube-delivered enteral nutrition products or necessary equipment or supplies when a client:

(a) Resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).

(b) Has elected and is eligible to receive MAA's hospice benefit, unless both of the following apply:

- (i) The client has a pre-existing medical condition that requires enteral nutritional support; and
- (ii) The pre-existing medical condition is not related to the diagnosis that qualifies the client for hospice.

(10) MAA pays separately for a client's tube-delivered enteral nutrition products and necessary equipment and supplies when:

- (a) The client resides in the nursing facility;
- (b) The client meets the eligibility criteria in WAC 388-554-300; and
- (c) Use of enteral nutrition products meets one hundred percent of the client's nutritional needs.

(11) MAA determines reimbursement for tube-delivered enteral nutrition products and necessary equipment and supplies using the same criteria described in WAC 388-554-500(5).

(12) MAA evaluates a request for tube-delivered enteral nutrition products and necessary equipment and supplies that are not covered or are in excess of the enteral nutrition program's limitations or restrictions, according to WAC 388-501-0165.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-600, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-700 Enteral nutrition products and supplies—Prior authorization requirements.** (1) All requests for oral enteral nutrition products, repairs to equipment, and replacement of necessary supplies for tube-delivery of enteral nutrition products require prior authorization as described in this section. See also WAC 388-501-0165.

(2) When MAA receives an initial request for prior authorization, the prescription(s) for those items cannot be older than three months from the date MAA receives the request.

(3) MAA may authorize orally administered enteral nutrition products that are listed in MAA's published issuances, including billing instructions and numbered memoranda, only if medical necessity is established and the provider furnishes all of the following information to MAA:

## Chapter 388-823 WAC

DIVISION OF DEVELOPMENTAL DISABILITIES  
INTAKE AND DETERMINATION OF  
DEVELOPMENTAL DISABILITIES

## WAC

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388-823-0510	If I have autism, how do I meet the definition of substantial limitations to adaptive functioning?
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388-823-0615	What evidence do I need to substantiate adaptive functioning limitations for another neurological condition?
388-823-0700	How do I meet the definition for an "other condition" similar to mental retardation?
388-823-0710	What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation?

(a) A copy of the signed and dated physician order completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), which includes client's medical condition and exact daily caloric amount of prescribed enteral nutrition product;

(b) Documentation from the client's physician, ARNP, or PA-C that verifies all of the following:

(i) The client has one of the medical conditions listed in WAC 388-554-300 (4)(e);

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client age eighteen or older, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than age eighteen, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is younger than age three; or

(B) An evaluation of the BMI if the client is older than age three and younger than age eighteen.

(v) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate (see WAC 388-554-500(4));

(vi) The client's likely expected outcome if enteral nutritional support is not provided; and

(vii) Number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required.

(4) A provider may resubmit a request for prior authorization for oral enteral nutrition products or replacement of necessary supplies for tube-delivery of enteral nutrition products that MAA has denied. MAA requires the provider to include new documentation that is relevant to the request.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-700, filed 1/28/05, effective 3/1/05.]

**WAC 388-554-800 Enteral nutrition program requirements for WIC program-eligible clients.** Clients who qualify for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition through that program. The medical assistance administration (MAA) may cover the enteral nutrition products and supplies for WIC program-eligible clients only when all of the following are met:

(1) The provider requests prior authorization for the enteral nutrition product or supply;

(2) Documentation from the WIC program is attached to the request form that verifies:

(a) The client's enteral nutrition need is in excess of WIC program allocations; or

(b) The WIC program cannot supply the prescribed product; and

(3) The client meets the enteral nutrition program requirements in this chapter.

[Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. 05-04-059, § 388-554-800, filed 1/28/05, effective 3/1/05.]

388-823-0800	Which eligible developmental disability conditions apply at what age?
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388-823-0820	If I am a child under age ten with an eligible condition under the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial limitations to adaptive functioning?
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388-823-0900	What are the qualifying scores for inventory of client and agency planning broad independence for each age?
388-823-0910	What is the purpose of ICAP?
388-823-0920	What sections of the ICAP does DDD or a designee contracted with DDD complete and score?
388-823-0930	How does DDD or a designee contracted with DDD administer the ICAP?
388-823-0940	What happens if DDD or a designee contracted with DDD cannot identify a qualified respondent?
388-823-1000	Once I become an eligible DDD client, is there a time limit to my eligibility?
388-823-1005	When does my eligibility as a DDD client expire?
388-823-1010	When will DDD review my eligibility to determine if I continue to have a developmental disability?
388-823-1015	What is the definition of "DDD paid services" in WAC 388-823-1010(3)?
388-823-1020	Can DDD terminate my eligibility if I no longer am a resident of the state of Washington?
388-823-1030	How will I know that my eligibility is expiring or is due for review?
388-823-1040	What happens if I do not reapply for eligibility before my eligibility expiration date?
388-823-1050	What happens if I do not respond to a request for information to review my eligibility?
388-823-1060	How will DDD notify me of its decision?
388-823-1070	What are my appeal rights to a department decision that I do not have a developmental disability?
388-823-1080	If DDD decides that I do not have a developmental disability, how soon can I reapply for another decision?
388-823-1090	If I am already eligible, how do these new rules affect me?
388-823-1095	What are my rights as a DDD client?
388-823-1100	How do I complain to DDD about my services or treatment?

**WAC 388-823-0010 Definitions.** The following definitions apply to this chapter:

"Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the division of developmental disabilities.

"DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration, department of social and health services.

"Department" means the department of social and health services.

"Division" means the division of developmental disabilities.

"Eligible" means you have a developmental disability that meets all of the requirements in this chapter for a specific condition.

"Expiration date" means a specific date that your eligibility as a client of DDD and all services paid by DDD will stop.

"FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for DDD eligibility.

"ICAP" means the inventory for client and agency planning. This is a standardized assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. The goal is to get a snapshot of his/her ability.

"IMR" means an institution for the mentally retarded, per chapter 388-835 WAC or chapter 388-837 WAC.

"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.

"Review" means DDD must redetermine that you still have a developmental disability according to the rules that are in place at the time of the review.

"RHC" means one of five residential habilitation centers operated by the division: Lakeland Village, Yakima Valley School, Fircrest, Rainier School, and Francis Haddon Morgan Center.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by the division.

"Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.

"Termination" means an action taken by DDD that stops your DDD eligibility and services paid by DDD.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age eighteen years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

"Wechsler" means the Wechsler intelligence scale, which is an individually administered 11-subtest measure of an individual's capacity for intelligent behavior. The Wechsler has both a verbal scale and a performance scale. The Wechsler is used with individuals at least age three years but under age seventy-four years. The verbal scale can be used alone with individuals who have visual or motor impairments, and the performance scale can be used alone with

individuals who cannot adequately understand or produce spoken language. There are three Wechsler intelligence scales, dependent upon the age of the individual:

- The Wechsler preschool and primary scale of intelligence - revised (WPPSI-R), for children at least age three years but under age seven years;
- The Wechsler intelligence scale for children - third edition, (WISC-III), for children at least age six years but under age sixteen years; and
- The Wechsler adult intelligence scale - revised (WAIS-R), for individuals at least age sixteen years but under age seventy-four years.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0010, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0020 How do I become a client of the division of developmental disabilities?** You become a client of the division of developmental disabilities (DDD) if you apply for eligibility with DDD and DDD determines that you have a "developmental disability" as defined in this chapter.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0020, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0030 Will I receive paid services if DDD decides that I have a developmental disability?** If DDD determines that you have a developmental disability, your access to paid services as a DDD client depends on:

- (1) Your meeting eligibility requirements for the specific service;
- (2) An assessed need for the service; and
- (3) Available funding for the service. The availability of funding does not apply to Medicaid state plan services or services available under the DDD Medicaid home and community based services waiver.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0030, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0040 What is a developmental disability?** (1) A developmental disability is defined in RCW 71A.10.020(3) and must meet all of the following requirements. The developmental disability must currently:

- (a) Be attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDD to be closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation;
- (b) Originate prior to age eighteen;
- (c) Be expected to continue indefinitely; and
- (d) Result in substantial limitations to an individual's adaptive functioning.

(2) In addition to the requirements listed in (1) above, you must meet the other requirements contained in this chapter.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chap-

ters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0040, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0050 Must I be a resident of the state of Washington?** When you apply for eligibility with DDD, you must be a resident of the state of Washington. Proof of residency includes:

(1) The receipt of Medicaid or other benefits from the department of social and health services that require residency as a condition of eligibility; or

(2) Documentation that shows you live in the state of Washington, or, if you are a child under the age of eighteen, documentation that shows your parent or legal guardian lives in the state of Washington.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0050, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0060 How do I apply to become a client of DDD?** (1) You apply to become a client of DDD by calling the regional DDD office or a local DDD office and requesting determination of a developmental disability. The toll free regional numbers are:

Region 1	Spokane	1-800-462-0624
Region 2	Yakima	1-800-822-7840
Region 3	Everett	1-800-788-2053
	Bellingham	1-800-239-8285
	Mount Vernon	1-800-491-5266
Region 4	Seattle	1-800-314-3296
Region 5	Tacoma	1-800-248-0949
	Bremerton	1-800-735-6740
Region 6	Port Angeles	1-877-601-2760
	Tumwater	1-800-339-8227
	Vancouver	1-888-877-3490

(2) DDD will make arrangements with you to complete the application for the eligibility determination by mail or over the phone.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0060, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0070 Who can apply for an eligibility determination?** (1) The following individuals can apply for a determination of developmental disability:

(a) The parent or legal representative must apply on behalf of a child under the age of eighteen years;

(b) If there is a legal guardian of an applicant age eighteen years or older, the legal guardian must apply on behalf of the adult applicant; or

(c) If there is no legal guardian of an adult applicant age eighteen years or older, the adult applicant can apply on his/her own behalf.

(2) Any person, agency, or advocate may refer an adult for a determination of a developmental disability and assist with the application process. However, since the request for a determination of developmental disability is voluntary, DDD will request the verbal or written consent from the legal

guardian of the adult or from the adult applicant if there is no legal guardian.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0070, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0080 Who determines that I have a developmental disability?** DDD determines if you have a developmental disability as defined in this chapter after reviewing all documentation received by the division.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0080, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0090 How long will it take to complete a determination of my eligibility?** (1) Once DDD receives sufficient documentation to determine you eligible, DDD has thirty days from receipt of the final piece of documentation to make the determination of eligibility.

(2) If DDD has received all requested documentation but it is insufficient to establish eligibility, DDD will make a determination of ineligibility and send you written notice of denial of eligibility.

(3) If DDD has insufficient information to determine you eligible but has not received all of the requested documentation, DDD may deny your eligibility after ninety days from the date of application. Rules governing reapplying for eligibility are in WAC 388-823-1080.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0090, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0100 What is the effective date that I become an eligible client of DDD?** (1) If DDD receives sufficient information to substantiate your DDD eligibility, the effective date of your eligibility as a DDD client is the date of receipt of the final piece of documentation.

(2) Paid DDD services cannot begin before the effective date of your DDD eligibility.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0100, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0105 How will DDD notify me of the results of my eligibility determination?** DDD will send you written notification of the final determination of your eligibility per WAC 388-825-100.

(1) If you are not eligible, the written notice will explain why you are not eligible, explain your appeal rights to this decision, and provide you with a fair hearing request form.

(2) If you are eligible, the written notice will include:

(a) Your eligibility condition(s);

(b) The effective date of your eligibility;

(c) The expiration date or review date of your eligibility, if applicable; and

(d) The name and phone number of your assigned case manager.

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[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0105, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0110 Who is responsible for obtaining the documentation needed to make this eligibility determination?** You are responsible to obtain all of the information needed to document your disability or to provide DDD with the sources for obtaining the documentation.

(1) DDD will assist you in obtaining records but the purchase of diagnostic assessments or intelligence quotient (IQ) testing is your responsibility.

(2) If DDD determines that an Inventory of Client and Agency Planning (ICAP) is required, DDD will administer the ICAP at no expense to you.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0110, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0120 Will my diagnosis of a developmental disability qualify me for DDD eligibility?** Eligibility for DDD requires more than a diagnosis of a developmental disability. You must meet all of the elements that define a developmental disability in WAC 388-823-0040 and meet the requirements of a specific eligible condition defined in this chapter.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0120, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0130 Can I be eligible for DDD if my disability occurs on or after my eighteenth birthday?** DDD eligibility requires that your disability exist before your eighteenth birthday.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0130, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0140 What if I do not have written evidence that my disability began before my eighteenth birthday?** (1) If there is no documentation available to prove that your disability began prior to age eighteen, DDD may accept verbal information from your family or others who knew you prior to the age of eighteen about your early developmental history, educational history, illnesses, injuries or other information sufficient to validate the existence of an eligible condition prior to age eighteen.

(2) DDD will determine if the reported verbal information is adequate for documenting the existence of your condition prior to age eighteen.

(3) Additional evidence of your eligible condition and the resulting substantial limitations to adaptive functioning is still required.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0140, filed 6/1/05, effective 7/2/05.]



**WAC 388-823-0150 Which rules define a developmental disability if I am a child under the age of six years?** If you are a child under the age of six years, assessment of developmental delays and other age appropriate criteria are used to substantiate an eligible condition and substantial limitations in adaptive functioning as defined in WAC 388-823-0800 through 388-823-0850.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0150, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0160 Which rules define a developmental disability if I am age six through nine?** If you are a child age six but under age ten, you can meet the criteria for a developmental disability under either of the two following sets of rules:

- (1) Developmental delays per WAC 388-823-0800 through 388-823-0850; or
- (2) Developmental disabilities per WAC 388-823-0200 through 388-823-0710.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0160, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0170 Which rules define a developmental disability if I am age ten or older?** If you are age ten or older, only the rules in WAC 388-823-0200 through 388-823-0710 apply when deciding if you have a developmental disability.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0170, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0200 What evidence do I need to substantiate "mental retardation" as an eligible condition?** Evidence that you have an eligible condition under "mental retardation" requires a diagnosis of mental retardation by a licensed psychologist, or a finding of mental retardation by a certified school psychologist or a diagnosis of Down syndrome by a licensed physician.

- (1) This diagnosis is based on documentation of a life-long condition originating before age eighteen.
- (2) The condition results in significantly below average intellectual and adaptive skills functioning that will not improve with treatment, instruction or skill acquisition.
- (3) A diagnosis or finding of mental retardation by the examining psychologist must include an evaluation of adaptive functioning that includes the use of a standardized adaptive behavior scale indicating adaptive functioning that is more than two standard deviations below the mean, in at least two of the following areas: Communication, self care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0200, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0210 If I have mental retardation, how do I meet the definition of substantial limitations in adaptive functioning?** (1) If you meet the definition of mental retardation in WAC 388-823-0200, you must have substantial limitations in adaptive functioning of two standard deviations below the mean and a full-scale intelligence quotient (FSIQ) of more than two standard deviations below the mean.

- (2) The substantial limitation in adaptive functioning must reflect your current condition.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0210, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0215 What evidence do I need of my FSIQ?** Evidence of a qualifying FSIQ to meet the definition of substantial limitations for the condition of mental retardation is a FSIQ derived from a Stanford-Binet, Wechsler intelligence scale (Wechsler), differential abilities scale (DAS), Kaufman assessment battery for children (K-ABC), or a Leiter international performance scale-revised (Leiter-R) if you have a significant hearing impairment or English is not your primary language.

- (1) The test must be administered by a licensed psychologist or certified school psychologist.

- (2) The FSIQ cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with mental retardation and mental illness, other psychiatric condition, or other illness or injury, DDD must make its eligibility decision based solely on the diagnosis of mental retardation, excluding the effects of the mental illness, other psychiatric condition, illness or injury; or

(b) If DDD is unable to make this eligibility decision based solely on the diagnosis of mental retardation due to the existence of mental illness, other psychiatric condition or illness or injury, DDD will deny eligibility.

- (3) If you have a significant hearing impairment, the administering professional may estimate an FSIQ score using only the performance IQ score of the appropriate Wechsler or administer the Leiter-R.

(4) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

- (5) The following table shows the standard deviation for each assessment and the qualifying score of more than two standard deviations below the mean.

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Stanford-Binet 4th edition	16	67 or less
Stanford-Binet 5th edition	15	69 or less
Wechsler Intelligence Scales (Wechsler)	15	69 or less
Differential Abilities Scale (DAS)	15	69 or less

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Kaufman Assessment Battery for Children (K-ABC)	15	69 or less
Leiter International Performance Scale-Revised (Leiter-R) [for persons with significant hearing impairments or when English is not a primary language]	15	69 or less

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0215, filed 6/1/05, effective 7/2/05.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 388-823-0220 If I am too intellectually impaired to complete a standardized IQ test, how do I meet the criteria under mental retardation?** If in the opinion of the examining psychologist, you are too intellectually impaired to complete all of the subtests necessary to achieve an FSIQ score on an approved standardized IQ test, the examining psychologist may estimate an FSIQ from the available information based on a professional judgment about your intellectual functioning.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0220, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0230 If I have more than one FSIQ score, what criteria will DDD use to select the FSIQ score for determining eligibility?** (1) If you have more than one FSIQ, DDD will review the pattern of FSIQ scores.

(a) If there is no significant difference among these, DDD will accept the score the closest to age eighteen.

(b) If there are significant differences among the FSIQ scores, DDD will review the pattern and attempt to determine reasons for the fluctuations to ensure that the FSIQ is resulting from mental retardation and not from mental illness or other psychiatric condition, or illness, or other injury.

(i) If you are age eighteen or older, DDD will use the FSIQ obtained at age thirteen or older, provided the FSIQ is resulting from mental retardation.

(ii) If you are under age eighteen, DDD will use the most current FSIQ, provided the FSIQ is resulting from mental retardation.

(2) DDD will exclude any FSIQ score attributable to a condition or impairment that began on or after your eighteenth birthday.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0230, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0300 What evidence do I need to substantiate "cerebral palsy" as an eligible condition?** Evidence that you have an eligible condition under "cerebral palsy" requires a diagnosis by a licensed physician of cerebral palsy, quadriplegia, hemiplegia, or diplegia with symptoms that:

- (1) Existed prior to age three; and
- (2) Impair control of movement.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0300, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations to adaptive functioning?** If you have an eligible condition of cerebral palsy, substantial limitations of adaptive functioning is the need for direct physical assistance on a daily basis with two or more of the following activities as a result of your condition:

- (1) Toileting;
- (2) Bathing;
- (3) Eating;
- (4) Dressing;
- (5) Mobility; or
- (6) Communication.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0310, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0320 What evidence do I need of my need for direct physical assistance with activities of daily living?** Evidence for direct physical assistance with activities of daily living means:

(1) You need the presence and assistance of another person on a daily basis to be able to communicate and be understood by any other person.

(a) If you are able to communicate through a communication device you will be considered independent in communication.

(b) You must require more than "setting up" of the communication device.

(2) You need direct physical assistance from another person on a daily basis with toileting, bathing, eating, dressing, or mobility.

(a) You require more than "setting up" the task to enable you to perform the task independently.

(b) You must require direct physical assistance for more than transferring in and out of wheelchair, in and out of the bath or shower, and/or on and off of the toilet.

(c) Your ability to be mobile is your ability to move yourself from place to place, not your ability to walk. For instance, if you can transfer in and out of a wheelchair and are independently mobile in a wheelchair, you do not meet the requirement for direct physical assistance with mobility.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0320, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0330 How can I document my need for direct physical assistance?** Any of the following can be used as evidence to determine your direct physical assistance needs:

- (1) The comprehensive assessment reporting evaluation (CARE) tool or other department assessments that measure direct assistance needs in the areas specified above;
- (2) Assessments and reports from educational or health-care professionals that are current and consistent with your current functioning;
- (3) In the absence of professional reports or assessments, DDD may document its own observation of your direct assistance needs along with reported information by family and others familiar with you.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0330, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0400 What evidence do I need to substantiate "epilepsy" as an eligible condition?** Evidence of an eligible condition under "epilepsy" requires a diagnosis of a neurological condition that produces brief disturbances in the normal electrical functions of the brain resulting in seizures.

- (1) This condition requires a diagnosis of epilepsy or seizure disorder that originated prior to age eighteen and is expected to continue indefinitely.
- (2) The diagnosis must be made by a board certified neurologist and be based on documentation of medical history and neurological testing.
- (3) You must provide confirmation from your physician or neurologist that your seizures are currently uncontrolled and ongoing or recurring and cannot be controlled by medication.
- (4) DDD will not consider your seizures uncontrolled or ongoing if it is documented or reported that you refuse to take medications.
- (5) Your seizures must make you physically incapacitated, requiring direct physical assistance for one or more activities as defined in WAC 388-823-0310 and 388-823-0320 during or following seizures.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0400, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations to adaptive functioning?** A substantial limitation to adaptive functioning under epilepsy is a functional assessment score of more than two standard deviations below the mean on a Vineland adaptive behavior scales (VABS), scale of independent behavior-revised (SIB-R) or inventory for client and agency planning (ICAP) assessment instrument as described in WAC 388-823-0420.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0410, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0420 What evidence do I need to substantiate adaptive functioning limitations for the eligible conditions of epilepsy, autism and other conditions similar to mental retardation?** (1) Evidence of substantial limitations of adaptive functioning for the conditions of epilepsy, autism, and other conditions similar to mental retardation requires a qualifying score completed in the past thirty-six months in a VABS or a SIB-R, or a qualifying score completed in the past twenty-four months in an ICAP.

- (a) Professionals who administer and score the VABS must have a background in individual assessment, human development and behavior, and tests and measurements, as well as an understanding of individuals with disabilities.
- (b) Department staff or designee contracted with DDD must administer the ICAP.
- (c) DDD will administer or arrange for the administration of the ICAP if VABS or SIB-R results are not submitted.
- (d) Qualifying scores for each assessment are as follows:

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Vineland Adaptive Behavior Scales (VABS)	15	An adaptive behavior composite score of 69 or less
Scales of Independent Behavior-Revised (SIB-R)	15	A broad independence standard score of 69 or less for the adaptive behaviors
Inventory for Client and Agency Planning (ICAP)	15	Pursuant to WAC 388-823-0900, the broad independence domain score based on the applicant's birth date and the date the test is administered.

(2) If DDD is unable to determine that your current adaptive functioning impairment is the result of your developmental disability because you have an unrelated injury or illness that is impairing your current adaptive functioning:

- (a) DDD will not accept the results of a VABS or SIB-R administered after that event and will not administer the ICAP; and
- (b) Your eligibility will have to be determined under a different condition that does not require evidence of adaptive functioning per a VABS, SIB-R or ICAP.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0420, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0500 What evidence do I need to substantiate "autism" as an eligible condition?** Evidence of an eligible condition under "autism" requires a diagnosis by a qualified professional of autism or autistic disorder per 299.00 in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) that is expected to continue indefinitely, and evidence of onset before age three.

- (1) The following professionals are qualified to give this diagnosis:
  - (a) Board eligible neurologist;
  - (b) Board eligible psychiatrist;
  - (c) Licensed psychologist; or

(d) Board certified developmental and behavioral pediatrician.

(2) The evidence provided by a diagnosing professional in subsection (1) above exhibits a total of six or more of the following diagnostic criteria listed in the current DSM-IV-TR for Autistic Disorder 299.00:

(a) Two or more qualitative impairments in social interactions;

(b) One or more qualitative impairments in communication; and

(c) One or more impairments in restricted repetitive and stereotypical patterns or behavior, interests, and activities.

(3) A checklist of diagnostic criteria follows:

DSM-IV-TR Diagnostic Criteria required for Autism	Check if present
1. Qualitative impairment in social interaction	
a. Marked impairment in the use of multiple non-verbal behaviors	
b. Failure to develop peer relationships appropriate to developmental level	
c. A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people	
d. Lack of social or emotional reciprocity	
2. Qualitative impairment in communication	
a. Delay in the development of spoken language without nonverbal compensation	
b. In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others	
c. Stereotyped and repetitive use of language or idiosyncratic use of language	
d. Lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level	
3. Restricted repetitive and stereotyped patterns of behavior, interests, and activities	
a. Encompassing preoccupation with stereotyped and restricted patterns of interest that is abnormal in either intensity or focus	
b. Apparently inflexible adherence to specific, nonfunctional routines or rituals	
c. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)	
d. Persistent occupation with parts of objects	
TOTAL	

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0500, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0510 If I have autism, how do I meet the definition of substantial limitations to adaptive functioning?** A substantial limitation of adaptive functioning for the condition of autism is the presence of adaptive functioning impairment as described in WAC 388-823-0515.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0510, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0515 What evidence do I need to substantiate adaptive functioning limitations for the condition of autism?** Evidence of the substantial limitations of adaptive functioning for the condition of autism is both (1) and (2) below:

(1) Evidence of delay or abnormal functioning prior to age three years in at least one of the following areas:

(a) Social interaction;

(b) Language as used in social interaction;

(c) Communication; or

(d) Symbolic or imaginative play.

(2) Eligible scores in adaptive functioning per WAC 388-823-0420 (1)(d) and subject to all of WAC 388-823-0420.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0515, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0600 What evidence do I need to substantiate "another neurological condition" as an eligible condition?** Evidence of an eligible condition under "another neurological condition" requires a diagnosis by a licensed physician of an impairment of the central nervous system involving the brain and/or spinal cord that meets all of the following:

(1) Originated before age eighteen;

(2) Results in both physical disability and intellectual impairment;

(3) Is expected to continue indefinitely; and

(4) Is not attributable to a mental illness or psychiatric disorder.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0600, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0610 If I have another neurological condition, how do I meet the definition of substantial limitations to adaptive functioning?** Substantial limitations to adaptive functioning for the condition of another neurological condition require both intellectual impairment and the need for direct physical assistance with activities of daily living per WAC 388-823-0615 (1) and (2) below.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0610, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0615 What evidence do I need to substantiate adaptive functioning limitations for another neurological condition?** Evidence of substantial limitations to intellectual functioning for another neurological condition is all of the following:

(1) You must have an FSIQ score of 1.5 or more standard deviations below the mean on one of the following acceptable assessments in addition to the other criteria in this section. The acceptable assessments, the standard deviation and the qualifying scores are contained in the following table:

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Stanford-Binet 4th edition	16	76 or less
Stanford-Binet 5th edition	15	78 or less
Wechsler	15	78 or less

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Differential Abilities Scale (DAS)	15	78 or less
Kaufman Assessment Battery for Children (K-ABC)	15	78 or less
Leiter-R [for persons with significant hearing impairments or when English is not primary language]	15	78 or less

(2) You must have evidence of need for direct physical assistance on a daily basis with two or more of the following activities: Toileting, bathing, eating, dressing, mobility, or communication as a result of your condition as defined in WAC 388-823-0320 and 388-823-0330.

(3) The intellectual impairment and physical assistance needs must be the result of the central nervous system impairment and not due to another condition or diagnosis.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0615, filed 6/1/05, effective 7/2/05.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 388-823-0700 How do I meet the definition for an "other condition" similar to mental retardation?** You will need evidence in (1) or (2) below to substantiate that you have an "other condition" similar to mental retardation.

(1) You have a diagnosis of a condition or disorder that by definition results in both intellectual and adaptive skills deficits; and

(a) The diagnosis must be made by a licensed physician or licensed psychologist;

(b) The diagnosis must be due to a neurological condition, central nervous system disorder involving the brain or spinal column, or chromosomal disorder;

(c) The diagnosis or condition is not attributable to or is itself a mental illness, or emotional, social or behavior disorder;

(d) The condition must have originated before age eighteen; and

(e) The condition must be expected to continue indefinitely.

(2) You are under the age of eighteen and are eligible for DSHS-paid in-home nursing through the medically intensive program, defined in WAC 388-551-3000.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters

71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0700, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0710 What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation?** (1) Evidence of substantial limitation in both (a) and (b) below is required for an "other condition" similar to mental retardation.

(a) Evidence of intellectual impairment requires documentation of either (i) or (ii) or (iii) below:

(i) An FSIQ of 1.5 or more standard deviations below the mean as described in WAC 388-823-0615(1) for another neurological condition; or

(ii) Significant academic delays resulting in delay of at least twenty-five percent below the chronological age or age equivalent academic functioning in at least two academic areas or grade placement; or

(iii) In the absence of school records to substantiate (ii) above, DDD may review other information about your academic progress sufficient to validate your cognitive deficits.

(b) Unless there is evidence of other conditions or impairments unrelated to the eligible condition currently affecting adaptive functioning, the following evidence will determine if the eligible condition or disorder results in a substantial limitation in adaptive functioning:

(i) A score of more than two standard deviations below the mean on a VABS or SIB-R current within the past three years, or in the absence of a VABS or SIB-R, an ICAP administered by DDD within the past twenty-four months.

(ii) The qualifying scores for these tests are listed in WAC 388-823-0420 (1)(d).

(2) You do not need the additional evidence of your substantial limitations to adaptive functioning in (1)(a) and (b) above if your eligible condition is solely due to your eligibility and participation in the medically intensive program offered through DDD, defined in WAC 388-551-3000.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0710, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0800 Which eligible developmental disability conditions apply at what age?** (1) Children under the age of six must meet the definition of having a developmental disability by meeting the requirements listed in WAC 388-823-0810 through 388-823-0850.

(2) Children at least age six but under the age of ten can meet the definition of developmental disability by:

(a) Meeting the requirements listed in WAC 388-823-0200 through 388-823-0710; or

(b) Meeting the requirements listed in WAC 388-823-0810 through 388-823-0850.

(3) Children age ten and older must meet the requirements in WAC 388-823-0200 through 388-823-0710.

(4) The following chart summarizes the applicable eligibility conditions by age.

Eligible Conditions	Age 0-5	Age 6-9	Age 10-17	Age 18 and older
Developmental Delays	X	X		
Down Syndrome	X	X		
Too severe to be assessed	X	X		

Eligible Conditions	Age 0-5	Age 6-9	Age 10-17	Age 18 and older
Medically Intensive	X	X	X	
Mental Retardation (MR)		X	X	X
Cerebral Palsy		X	X	X
Epilepsy		X	X	X
Autism		X	X	X
Another Neurological		X	X	X
Other condition similar to MR		X	X	X

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0800, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0810 If I am a child under age ten, what evidence do I need to meet the definition for an "other condition" similar to mental retardation?** If you are a child under age ten, evidence of one of the following substantiates that you have an eligible "other condition" similar to mental retardation:

(1) Developmental delay measured by developmental assessment tools administered by qualified professionals as described in WAC 388-823-0850.

(2) A diagnosis of Down syndrome by a licensed physician;

(3) A determination of eligibility for the DSHS medically intensive program;

(4) A diagnosis by a licensed physician or licensed psychologist of a condition that is so severe the child is unable to demonstrate the minimal skills required to complete a developmental evaluation or assessment.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0810, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0820 If I am a child under age ten with an eligible condition under the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial limitations to adaptive functioning?** You do not need additional evidence of substantial limitations if you are a child under the age of ten with an eligible condition based on the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0820, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0830 If I am a child under age ten with an eligible condition based on developmental delays, how do I meet the definition of substantial limitations to adaptive functioning?** (1) If you are a child under age ten with an eligible condition based on developmental delays, evidence of substantial handicap requires developmental delays of at least 1.5 standard deviations or twenty-five percent or more of the chronological age in the following developmental areas:

- (a) Physical skills (fine or gross motor);
- (b) Self help/adaptive skills;

(c) Expressive or receptive communication, including American Sign Language;

(d) Social/emotional skills; and

(e) Cognitive, academic, or problem solving skills.

(2) The number of areas in which you are required to have delays to meet the evidence is specific to your age.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0830, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0840 If I am a child under age ten, how many areas of developmental delays meet the definition of substantial limitations to adaptive functioning?** If you are a child under the age ten, eligible based on developmental delays, the number of delays required for substantial limitations to adaptive functioning is specific to your age.

(1) A child from birth but under age three must have a developmental delay in one or more developmental areas.

(2) A child age three but under age ten must have developmental delays in three or more developmental areas.

AGE	NUMBER OF AREAS OF DELAY
Birth but under age three	One or more
Age three but under age ten	Three or more

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0840, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0850 What developmental evaluations or assessments will be acceptable for determining developmental delay?** DDD will accept any standardized developmental evaluation test of procedures to assess developmental delays if:

(1) The results of the evaluation/assessment are reasonably reliable and valid by professional standards.

(a) If you are under age three, there is an evaluation of developmental areas that is current within the past twelve months. Evaluations determine eligibility for services and need to address each of the five developmental areas.

(b) If you are age three or older, there is an assessment of developmental areas. Assessments are more detailed than evaluations and are needed for determining types of services, method, intensity, and funding. Assessments are also the way to document the ongoing status of child's development, progress and recommended steps to meet outcomes.

(2) The evaluation/assessment is administered by one of the following professionals qualified to administer the evaluation or assessment of developmental areas:

- (a) Licensed physician;
- (b) Licensed psychologist or certified school psychologist;
- (c) Speech language pathologist;
- (d) Audiologist;
- (e) Registered occupational therapist;
- (f) Licensed physical therapist;
- (g) Registered nurse;
- (h) Certified teacher;
- (i) Masters level social worker; or
- (j) Orientation and mobility specialist.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0850, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0900 What are the qualifying scores for inventory of client and agency planning broad independence for each age?** When the ICAP is administered to determine eligibility under substantial handicap for a developmental disability, the qualifying score must be at or below the three digit broad independence domain score specific to the age of the applicant at the time of the administration of the ICAP. The score specific to age follows:

AGE	SCORE (at or below)
6	449
7	456
8	463
9	469
10	476
11	482
12	487
13	492
14	497
15	501
16	505
17 and older	509

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0900, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0910 What is the purpose of ICAP?** The purpose of the ICAP is to assess your adaptive skills in the areas of motor skills, personal living skills, social and communication skills, and community living skills.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0910, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0920 What sections of the ICAP does DDD or a designee contracted with DDD complete and score?** (1) DDD or a designee contracted with DDD completes the adaptive behavior portion of the ICAP.

(2) There is a computer generated broad independence score of your motor skills, personal living skills, social and

communication skills, and community living skills, based on your age.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0920, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0930 How does DDD or a designee contracted with DDD administer the ICAP?** (1) DDD or a designee contracted with DDD completes the adaptive section of the ICAP by interviewing a qualified respondent who has known you for at least three months and who sees you on a day-to-day basis. You cannot be the respondent for your own ICAP.

(2) DDD or a designee contracted with DDD will choose the respondent and may interview more than one respondent to ensure that information is complete and accurate.

(3) DDD or a designee contracted with DDD will ask you to demonstrate some of the skills in order to evaluate what skills you are able to perform. DDD or a designee contracted with DDD cannot administer the ICAP if no respondent is identified and available.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0930, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-0940 What happens if DDD or a designee contracted with DDD cannot identify a qualified respondent?** If you and DDD or a designee contracted with DDD cannot identify a qualified respondent for the ICAP, DDD or a designee contracted with DDD will not be able to administer the ICAP or determine you eligible under any conditions that require an ICAP.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-0940, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1000 Once I become an eligible DDD client, is there a time limit to my eligibility?** While DDD has the authority to review your eligibility at any time, your eligibility as a DDD client will expire or have required reviews as indicated in WAC 388-823-1005 and 388-823-1010.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1000, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1005 When does my eligibility as a DDD client expire?** (1) If you are determined eligible prior to age four, your eligibility expires on your fourth birthday.

(a) DDD will notify you at least ninety days before your eligibility expiration date.

(b) You must reapply for eligibility with DDD.

(2) If you are determined or redetermined eligible at age three but under age ten per WAC 388-823-0810 through 388-823-0850, your eligibility expires on your tenth birthday.

(a) DDD will notify you at least ninety days before your eligibility expiration date.

(b) You must reapply for eligibility with DDD.

(3) If your eligibility determination was prior to July 2005 under developmental delays, Down syndrome, or medically intensive program and you are age four or older as of June 30, 2005, your eligibility expires on your tenth birthday.

(a) DDD will notify you at least ninety days before of your eligibility expiration date.

(b) You must reapply for eligibility with DDD.

(4) If your eligibility determination was made after July 2005 and is solely due to your need for nursing through the medically intensive program, your eligibility expires when you are no longer eligible for the program but no later than your eighteenth birthday.

(a) DDD will notify you at least ninety days before your eighteenth birthday.

(b) You must reapply for eligibility with DDD.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1005, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability?** (1) Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.

(2) Your eligibility will be reviewed at age seventeen with termination occurring no sooner than your eighteenth birthday if your most current eligibility determination was at sixteen or younger under mental retardation, cerebral palsy, epilepsy, autism, another neurological condition, or other condition similar to mental retardation.

(3) DDD will review your eligibility prior to the initial authorization of any paid service from DDD when you are not currently receiving paid services and:

(a) You are age eighteen or older and your most current eligibility determination is more than twenty-four months old; or

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is prior to July 2005.

(4) DDD will review your eligibility if DDD discovers:

(a) The evidence used to make your most recent eligibility determination completed in 1992 or later appears to be insufficient, in error, or fraudulent; or

(b) New diagnostic information becomes available that does not support your current eligibility and you are under the age of eighteen.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1010, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1015 What is the definition of "DDD paid services" in WAC 388-823-1010(3)?** DDD paid services are defined by one or more of the following:

(1) Authorization of a paid service within the last ninety days as evidenced by a social services payment system (SSPS) authorization, a county authorization for day program services, a waiver plan of care approving a DDD paid service,

or residence in a SOLA, RHC, or IMR (authorization of a state supplementary payment through SSPS does not meet the definition of a DDD paid service);

(2) Authorization of family support services within the last twelve months.

(3) Documentation of DDD approval of your absence from DDD paid services for more than ninety days with available funding for your planned return to services.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1015, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1020 Can DDD terminate my eligibility if I no longer am a resident of the state of Washington?** DDD will terminate your eligibility if you lose residency in the state of Washington as defined in WAC 388-823-0050.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1020, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1030 How will I know that my eligibility is expiring or is due for review?** If your eligibility has a required expiration or review date, DDD will send you prior written notification with reapplication or review information.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1030, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1040 What happens if I do not reapply for eligibility before my eligibility expiration date?** (1) If you fail to reapply before your eligibility expires on your fourth or tenth birthday or if you reapply so near in time to your fourth or tenth birthday that DDD does not have sufficient time to make an eligibility determination by the date of expiration, DDD eligibility will expire and your DDD paid services will stop.

(a) If DDD determines you eligible after your eligibility expires, your eligibility and paid services will be reinstated on the date that DDD determines you eligible pursuant to WAC 388-823-0100.

(b) If DDD determines you eligible after your eligibility expires, your eligibility and paid services will not be retroactive to the expiration date.

(2) This expiration of eligibility takes effect even if DDD is unable to locate you to provide written notification that eligibility is expiring.

(3) There is no appeal right to an expired eligibility determination.

(4) Your appeal rights to the termination of services resulting from a review of your eligibility due to the expiration of your eligibility on your fourth or tenth birthday are in WAC 388-825-120 and 388-825-150(2).

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1040, filed 6/1/05, effective 7/2/05.]



**WAC 388-823-1050 What happens if I do not respond to a request for information to review my eligibility?** If you do not provide DDD with the information required to review and redetermine your eligibility, DDD will terminate your eligibility and any DDD services you might be receiving.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1050, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1060 How will DDD notify me of its decision?** DDD will notify you and your legal representative or one other responsible party in writing of its determination of eligibility, ineligibility, or expiration of eligibility per WAC 388-825-100.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1060, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1070 What are my appeal rights to a department decision that I do not have a developmental disability?** Your appeal rights to a department decision that you are not eligible to be a DDD client because you do not have a developmental disability are limited to those described in WAC 388-825-120 through 388-825-165.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1070, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1080 If DDD decides that I do not have a developmental disability, how soon can I reapply for another decision?** If DDD decides that you do not have a developmental disability as defined in this chapter, you may reapply only if:

- (1) Your eligibility was terminated because DDD could not locate you and you have subsequently contacted DDD;
- (2) Your eligibility was terminated because you lost residency in the state of Washington and you have reestablished residency;
- (3) You have additional or new information relevant to the determination that DDD did not review for the previous determination of eligibility; or
- (4) DDD denied or terminated your eligibility based solely on your ICAP score and it has been more than twenty-four months since your last ICAP.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1080, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1090 If I am already eligible, how do these new rules affect me?** If you are an eligible DDD client on the effective date of these rules, you continue to be an eligible DDD client but you are subject to the expiration and required eligibility reviews per WAC 388-823-1000 through 388-823-1050.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1090, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1095 What are my rights as a DDD client?** As a DDD client, you have the following rights:

- (1) The right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;
- (2) The right to appeal any decision by DDD that denies, reduces, or terminates your eligibility, your services or your choice of provider;
- (3) The right to receive only those services you agree to;
- (4) The right to meet with and talk privately with your friends and family;
- (5) The right to personal privacy and confidentiality of your personal and other records;
- (6) The right to choose activities, schedules, and health care that meet your needs;
- (7) The right to be free from discrimination because of your race, color, creed, national origin, religion, age, disability, marital status, or sexual orientation;
- (8) The right to set your own rules in your home and to know what rules your providers have when you are living in their house or working in their facility;
- (9) The right to request information regarding services that may be available from DDD;
- (10) The right to know what your doctor wants you to do or take and to help plan how that will happen;
- (11) The right to be free from unnecessary medication, restraints and restrictions;
- (12) The right to vote and help people get elected to office;
- (13) The right to complain and not to have someone "get even";
- (14) The right to have your provider listen to your concerns including those about the behavior of other people where you live;
- (15) The right to receive help from an advocate;
- (16) The right to manage your money or choose other persons to assist you;
- (17) The right to be part of the community;
- (18) The right to make choices about your life;
- (19) The right to wear your clothes and hair the way you want;
- (20) The right to work and be paid for the work you do; and
- (21) The right to decide whether or not to participate in research after the research has been explained to you, and after you or your guardian gives written consent for you to participate in the research;

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1095, filed 6/1/05, effective 7/2/05.]

**WAC 388-823-1100 How do I complain to DDD about my services or treatment?** If you have a complaint or grievance about your services or treatment, follow these steps in this order:

- (1) First, contact your case resource manager or social worker by phone, in writing, email, or in person and explain your problem.

(2) If you are not happy with the results from speaking with your case resource manager or social worker, you may ask to speak with their supervisor.

(3) If steps (1) and (2) do not solve your problem, you submit your complaint in writing to the regional office.

(4) If you do not reach a solution with the regional office, you can request that your complaint be forwarded to the DDD headquarters in Olympia.

[Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.-070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. 05-12-130, § 388-823-1100, filed 6/1/05, effective 7/2/05.]

### Chapter 388-824 WAC

#### DIVISION OF DEVELOPMENTAL DISABILITIES MINI-ASSESSMENT PROCESS

##### WAC

388-824-0001	What definitions apply to this chapter?
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388-824-0015	How do you and/or your respondent(s) obtain information about the mini-assessment?
388-824-0020	What is the purpose of the mini-assessment?
388-824-0025	What domains does the mini-assessment evaluate to identify your relative level of need?
388-824-0030	Does the mini-assessment affect other DDD assessments?
388-824-0040	Who receives a mini-assessment?
388-824-0050	Who does not receive a mini-assessment?
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388-824-0090	Does reporting your family's annual gross income and number of family dependents affect your eligibility for paid services?
388-824-0100	What does DDD do if the respondent does not provide the requested family income and dependent information?
388-824-0120	What is the difference between a mini-assessment for adults and a mini-assessment for children?
388-824-0140	How does the mini-assessment use information that is scored during the mini-assessment interview?
388-824-0170	What occurs when you are assigned to the "high level of need" group?
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388-824-0240	How do you know the results of your mini-assessment?
388-824-0260	What is the full assessment referral data base?
388-824-0280	What information does DDD use in deciding whom to refer for a full assessment?
388-824-0290	When does DDD remove my name from the full assessment referral data base?
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388-824-0320	Are there appeal rights to the mini-assessment?
388-824-0330	If you request a hearing to review the results of your mini-assessment, which mini-assessment does the administrative law judge review in the hearing?

**WAC 388-824-0001 What definitions apply to this chapter?** The following definitions apply to this chapter:

"Algorithm" means a numerical formula used by the mini-assessment software application to assign a client to a level of need group.

"CARE" means the comprehensive assessment reporting evaluation as defined in chapter 388-106 WAC.

"Client" means a person with a developmental disability as defined in chapter 388-823 WAC. For purposes of this chapter, the term "client" may include the client's representative.

"Crisis" means a serious and imminent threat exists or will exist without immediate intervention and the client lacks the resources to address the situation. The threat may be:

- (1) To the life, health and/or safety of the client; or
- (2) To the safety of the client's family; or
- (3) To the safety of the community.

"Department" means the Washington state department of social and health services.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration (ADSA), department of social and health services (DSHS).

"Domain" means a specific area of the client's life. For mini-assessment purposes only, domains are identified in WAC 388-824-0025.

"Full assessment" means an inventory and evaluation of client needs using a department approved tool to determine service eligibility and amount of services that may be authorized.

"Full assessment referral data base" means a report that contains client identification information and mini-assessment results.

"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded by Title XIX to provide services to individuals diagnosed as having mental retardation or persons with related conditions as defined in chapter 388-825 WAC.

"Information and referral" means a service directing clients to appropriate DSHS and generic community resources based on reported and/or assessed needs. This includes client/family education and problem solving related to reported and/or identified needs. This does not include authorizing a paid service.

"Mini-assessment" means a brief computerized assessment tool using a set of questions and responses scored by an algorithm. A mini-assessment identifies the relative level of need that exists in specific domains of the client's life.

"Paid services" is defined as one or more of the following:

(1) Authorization of a paid service within the last ninety days as evidenced by a social services payment system (SSPS) authorization, a county authorization for day program services, a waiver plan of care approving a DDD paid service, or residence in a SOLA or ICF/MR.

(2) Authorization of family support services within the last twelve months.

(3) Documentation of DDD approval of your absence from DDD paid services for more than ninety days with available funding for your planned return to services.

"Reassessment" means any additional mini-assessment that the client receives after the initial mini-assessment.

"Respondent" means a client's parent(s) or another person who participates in the mini-assessment interview by answering questions and providing information.

"Significant change" means a reported change, for better or worse, in the client's medical condition, caregiver status, or need for support that differs from what was reported in the client's initial mini-assessment.

"SOLA" means a state operated living alternative program for adults that is operated by DDD.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0001, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0010 What is the DDD mini-assessment?** (1) The mini-assessment is a brief computerized assessment tool that case managers use to identify the relative level of need that exists in specific domains of your life.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0010, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0015 How do you and/or your respondent(s) obtain information about the mini-assessment?** Upon request, your case manager must provide you with a written copy and/or information on how to obtain a copy of the mini-assessment and associated algorithm.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0015, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0020 What is the purpose of the mini-assessment?** The purpose of the mini-assessment is to:

- (1) Identify major domains in which needs may exist, as identified in WAC 388-824-0010;
- (2) Identify clients with no current unmet needs;
- (3) Identify clients who are not in crisis and who will receive information and referral services alone;
- (4) Identify clients who need employment or other county services;
- (5) Determine whether a client is in crisis;
- (6) Identify clients who may be eligible for Medicaid personal care;
- (7) Assign clients to one of the following level of need groups for referral to the full assessment referral data base:
  - (a) High level of need;
  - (b) Moderate level of need; or
  - (c) Low level of need; and
- (8) Assist supervisors and case resource managers to make decisions about whom to refer for a full assessment.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0020, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0025 What domains does the mini-assessment evaluate to identify your relative level of need?** The mini-assessment evaluates information you report regarding the following specific domains:

- (1) Housing;
- (2) Caregiver/support system;
- (3) Safety;
- (4) Community protection;
- (5) Behavior;
- (6) Financial/subsistence;
- (7) Physical health;
- (8) Mental health;
- (9) Personal care assistance;
- (10) Education;

- (11) Employment;
- (12) Social/community participation;
- (13) Legal;
- (14) Communication;
- (15) Adaptive equipment; and
- (16) Transportation.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0025, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0030 Does the mini-assessment affect other DDD assessments?** The mini-assessment does not replace or change other assessments that DDD uses.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0030, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0040 Who receives a mini-assessment?** (1) DDD conducts a mini-assessment if you have been determined eligible to be a client of the division of developmental disabilities per WAC 388-823-0020 and meet the requirements of WAC 388-824-0050; or

(2) You are eligible to be a client of DDD per WAC 388-823-0020 and are eligible for the Medicaid categorically needy program (CNP) but you have been determined ineligible for Medicaid personal care by a CARE assessment, or have declined Medicaid personal care services.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0040, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0050 Who does not receive a mini-assessment?** DDD does not conduct a mini-assessment in any of these situations:

- (1) Your child is under age of three, since your child:
  - (a) May be eligible for services through the federally funded infant toddler early intervention program; and
  - (b) May be referred for county-funded child development services.

(2) You are under the age of seventeen years and receiving private duty nursing services as defined by WAC 388-551-3000.

(3) You have been authorized to receive a state supplementary payment, through SSPS.

(4) You are currently living in or being discharged from a state-paid residential program or facility.

(5) You are in crisis and have been referred directly for a full assessment by a supervisor or case resource manager.

(6) You are receiving paid services as defined in WAC 388-824-0001.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0050, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0055 Who participates in the mini-assessment?** You and your respondent(s) participate in the mini-assessment. If you are under age of eighteen or have a legal guardian, the primary respondent(s) will be your parent(s) or legal guardian.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0055, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0060 How does DDD conduct an initial mini-assessment?** (1) DDD staff must complete the mini-assessment through a face-to-face interview with you.

(2) The mini-assessment may occur at any site agreed to by you, your respondent(s) and DDD.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0060, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0065 When does DDD conduct a reassessment?** A reassessment may occur when:

(1) A significant change is reported regarding your relative level of need; and

(2) You and/or your respondent have requested assistance in supporting your reported unmet need to your case resource manager; and

(3) You meet the criteria defined in WAC 388-824-0040 and 388-824-0050; or

(4) A supervisor and/or your case resource manager determine that a reassessment is necessary.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0065, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0070 Does DDD require you to disclose financial information?** (1) If you are under the age of eighteen and live with your natural, step, or adoptive parent(s), your case resource manager must ask for information regarding:

(a) Your family's annual gross income; and  
(b) The number of dependents in your family's household.

(2) Your case resource manager must ask for this information before completing your mini-assessment.

(3) If your respondent(s) agree to disclose your family's annual gross income and the number of your family's dependents, your case resource manager must record this information in the CARE tool.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0070, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0080 Is the respondent required to provide verification of my family's annual gross income?** Your respondent(s) are not required to provide verification or evidence of your family's annual gross income and/or number of family dependents.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0080, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0090 Does reporting your family's annual gross income and number of family dependents affect your eligibility for paid services?** Reporting your family's annual gross income and number of family dependents does not affect your eligibility for paid services except when the legislature establishes, by law, standards for a specific service.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0090, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0100 What does DDD do if the respondent does not provide the requested family income and dependent information?** If the respondent does not provide information regarding your family's annual gross

income and number of family dependents, the case resource manager must:

(1) Document that the your respondent(s) have declined to provide information regarding your family's annual gross income information and/or number of family dependents.

(2) Ask your respondent(s) if they would like information regarding a referral for ICF/MR services per Title 71A RCW, chapter 388-825 WAC and chapter 388-837 WAC.

(3) Offer you and/or your respondent(s) an opportunity to complete the mini-assessment.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0100, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0120 What is the difference between a mini-assessment for adults and a mini-assessment for children?** The differences between a mini-assessment for adults and children are:

(1) The requirement to request your family income information and number of family dependents per chapter 388-824-0070; and

(2) The presentation of different wordings of questions which may activate or inactivate whole questions based on your age.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0120, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0140 How does the mini-assessment use information that is scored during the mini-assessment interview?** The mini-assessment uses information reported by you and/or your respondent(s) to evaluate your relative level of need using an algorithm in the software application.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0140, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0170 What occurs when you are assigned to the "high level of need" group?** When you are assigned to the "high level of need" group, your case resource manager must do one or more of the following:

(1) Refer you to the full assessment referral data base for a full assessment.

(2) Assist you to resolve a crisis, if indicated by the mini-assessment, before initiating a full assessment.

(3) Offer you necessary information and referral services to address a reported and/or assessed need.

(4) Provide you and your respondent(s) with information on how to contact your case resource manager should a change in your needs occur.

(5) Refer you for further case management review if the mini-assessment indicates:

(a) You have an unmet need in the community protection domain; or

(b) You may be at risk for placement in a more restrictive setting.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0170, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0190 What occurs when you are assigned to the "moderate level of need" group?** When you are assigned to the "moderate level of need" group, your case resource manager must do one or more of the following:

(1) Refer you to the full assessment referral data base for a full assessment.

(2) Offer you necessary information and referral services to address a reported and/or assessed need.

(3) Refer you for further case management review if the mini-assessment identifies you to be at risk for placement in a more restrictive residential setting.

(4) Provide you and your respondent(s) with information on how to contact your case resource manager should a change in your needs occur.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0190, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0210 What occurs when you are assigned to the "low level of need" group?** When you are assigned to the "low level of need" group, your case resource manager must do one or more of the following:

(1) Refer you to the full assessment referral data base.

(2) Offer you necessary information and referral services to address a reported and/or assessed need.

(3) Provide you and your respondent(s) with information on how to contact your case resource manager should a change in your needs occur.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0210, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0220 When will I be reassigned to another level of need group?** You may be reassigned to another level of need group only if you continue to meet the criteria defined in WAC 388-824-0065 and receive a reassessment that indicates assignment to another level of need group.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0220, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0230 Does the mini-assessment result in paid services?** The mini-assessment does not result in you receiving paid services except when the legislature establishes, by law, standards for specific service.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0230, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0240 How do you know the results of your mini-assessment?** After the mini-assessment is performed, your case resource manager must discuss the results with you and/or your respondent(s). You and your designated respondent(s) will be notified in writing regarding:

(1) Your assigned level of need group; and

(2) Information on how to contact your case resource manager should a change in your needs occur.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0240, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0260 What is the full assessment referral data base?** The full assessment referral data base is a report that assists supervisors and case resource managers to make decisions about whom to refer for a full assessment. It contains the following information:

(1) Your name, date of birth, and phone number.

(2) The date your mini-assessment was performed.

(3) Information about whether the mini-assessment indicated that you may be in crisis.

(4) Information regarding your relative level of need to include:

(a) Your assigned level of need group; and

(b) Your mini-assessment score.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0260, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0280 What information does DDD use in deciding whom to refer for a full assessment?** DDD refers you from the full assessment referral data base for a full assessment on the basis of:

(1) Your mini-assessment score;

(2) Your identified level of unmet need;

(3) DDD's capacity for completing full assessments; and

(4) Available funding to provide an approved service to meet the identified level of unmet need.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0280, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0290 When does DDD remove my name from the full assessment referral data base?** DDD removes your name from the full assessment referral data base after:

(1) You have received a full assessment;

(2) DDD determines that you no longer meet the criteria for a mini-assessment per WAC 388-824-0050; or

(3) DDD determines that you are receiving a paid service and/or no longer eligible to be a client of the division of developmental disabilities per chapter 388-823 WAC.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0290, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0310 When DDD adjusts the mini-assessment algorithm, when does the adjustment become effective?** When DDD adjusts the mini-assessment algorithm, the adjustment becomes effective at your initial or next mini-assessment or reassessment following the date of the algorithm adjustment.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0310, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0320 Are there appeal rights to the mini-assessment?** (1) You and/or your designated representative(s) have the right to a hearing when:

(a) You disagree with the information entered into the mini-assessment; or

(b) DDD denies you and/or your designated representative's request to have a reassessment performed.

(2) You do not have the right to appeal the mini-assessment algorithm.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0320, filed 11/8/05, effective 12/10/05.]

**WAC 388-824-0330 If you request a hearing to review the results of your mini-assessment, which mini-assessment does the administrative law judge review in the hearing?** If you request a hearing to review the results of

your mini-assessment, the administrative law judge must review your most recent mini-assessment.

[Statutory Authority: RCW 71A.12.030, Title 71A RCW, 2005 c 518. 05-23-030, § 388-824-0330, filed 11/8/05, effective 12/10/05.]

## Chapter 388-825 WAC

### DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES RULES

(Formerly chapter 275-27 WAC)

#### WAC

388-825-055	Authorization of services.
388-825-103	When will I receive written notice of decisions made by DDD?
388-825-120	When can I appeal department decisions through an administrative hearing process?
388-825-125	How do I request an administrative hearing?
388-825-130	How long do I have to file a request for an administrative hearing?
388-825-135	What if I need help to request an administrative hearing?
388-825-140	Who else can help me appeal a department decision?
388-825-145	Will my benefits continue if I request an administrative hearing?
388-825-150	When can the department proceed to take action during my appeal?
388-825-155	What are my appeal rights if I am appealing a decision to move me from a state residential habilitation center to the community?
388-825-160	When will a decision on my appeal be made?
388-825-165	Can I appeal the initial order of the administrative law judge?
388-825-300	What is the purpose of WAC 388-825-300 through 388-825-400?
388-825-305	What service providers are governed by the qualifications in these rules?
388-825-310	What are the qualifications for providers?
388-825-315	What is your responsibility when you hire an individual respite care, attendant care or personal care provider?
388-825-316	How do I choose a companion home or alternative living provider?
388-825-320	How does a person become an individual provider, companion home provider or an alternative living provider?
388-825-325	What are required skills and abilities for individuals and agencies contracted to provide respite care, companion home services, personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus or CORE waivers, alternative living services or attendant care services?
388-825-330	What is required for agencies wanting to provide care in the home of a person with developmental disabilities?
388-825-335	Is a background check required of a home care agency provider?
388-825-340	What is required for a provider to provide respite or residential service in their home?
388-825-345	What "related" providers are exempt from licensing?
388-825-355	Are there any educational requirements for individuals providing respite care, attendant care, personal care services, companion home services, or alternative living services?
388-825-360	How does an individual terminate employment as a provider?
388-825-365	Are providers expected to report abuse, neglect, exploitation or financial exploitation?
388-825-370	What are the responsibilities of an individual or home care agency when employed to provide respite care, attendant care, personal care, companion home services or alternative living services to a client?
388-825-375	When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, personal care, companion home services or alternative living services?
388-825-380	When can the department reject the client's choice of an individual respite care, attendant care or personal care provider?

388-825-381	When can the department reject the client's choice of a companion home services or alternative living services provider?
388-825-385	When can the department terminate or summarily suspend an individual respite care, attendant care, personal care, companion home services or alternative living services provider's contract?
388-825-390	When can the department otherwise terminate an individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services?
388-825-395	What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services?
388-825-396	Does the provider of respite care, attendant care, personal care, companion home services or alternative living services have a right to a fair hearing?
388-825-400	Self-directed care—Who must direct self-directed care?

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-825-030	Eligibility for services. [Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-030, filed 7/25/02, effective 8/25/02. 99-19-104, recodified as § 388-825-030, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.10.020. 92-04-004 (Order 3319), § 275-27-026, filed 1/23/92, effective 2/23/92. Statutory Authority: RCW 71.20.070. 89-06-049 (Order 2767), § 275-27-026, filed 2/28/89.] Repealed by 05-12-130, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW.
388-825-035	Determination of eligibility. [Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-035, filed 7/25/02, effective 8/25/02. 99-19-104, recodified as § 388-825-035, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71.20.070. 89-06-049 (Order 2767), § 275-27-030, filed 2/28/89; 84-15-058 (Order 2124), § 275-27-030, filed 7/18/84; Order 1143, § 275-27-030, filed 8/11/76.] Repealed by 05-12-130, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW.
388-825-040	Application for services. [99-19-104, recodified as § 388-825-040, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. 98-20-044, § 275-27-040, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71.20.070. 84-15-058 (Order 2124), § 275-27-040, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-040, filed 3/16/78; Order 1143, § 275-27-040, filed 8/11/76.] Repealed by 05-12-130, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW.
388-825-060	What are the eligibility requirements for persons who receive funds directly for employment/day programs? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-060, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.
388-825-064	What are the restrictions on the use of the funds paid directly to persons for employment/day programs? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-064, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.
388-825-070	What happens if I do not spend the funds paid directly to me for employment/day programs as specified in WAC

	388-825-064? [Statutory Authority: RCW 71A.12.030, 71A.10.020, and 2002 c 371. 04-11-087, § 388-825-070, filed 5/18/04, effective 6/18/04; 04-02-014, § 388-825-070, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.		effective 9/20/99. Statutory Authority: RCW 71A.16.020, 91-17-005 (Order 3230), § 275-27-820, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71A.12.020, 84-07-018 (Order 2086), § 275-27-820, filed 3/14/84.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-075	How much money will I receive? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-075, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-260	What are qualifications for individual service providers? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-260, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-076	How often will I receive a direct payment check for my employment/day program services? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-076, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-262	What services do individuals provide for persons with developmental disabilities? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-262, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-077	Who will the warrant/check be sent to? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-077, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-264	If I want to provide services to persons with developmental disabilities, what do I do? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-264, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-078	How will the warrant/check be sent? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-078, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-266	If I want to provide respite care in my home, what is required? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-266, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-085	What is a representative payee? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-085, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-268	What is required for agencies wanting to provide care in the home of a person with developmental disabilities? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-268, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-086	Who can be a representative payee for my DDD direct payment funds for employment/day program services? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-086, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-270	Are there exceptions to the licensing requirement? [Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-270, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-270, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-087	What are the responsibilities of a representative payee? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-087, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-272	What are the minimum requirements to become an individual provider? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-272, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-090	When will DDD recover direct payment funds sent to me for employment/day program services? [Statutory Authority: RCW 71A.12.030, 71A.10.020, and 2002 c 371. 04-11-087, § 388-825-090, filed 5/18/04, effective 6/18/04; 04-02-014, § 388-825-090, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-276	What are required skills and abilities for this job? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-276, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-095	Who is liable for repayment of an overpayment? [Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-095, filed 12/29/03, effective 1/29/04.] Repealed by 05-11-015, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW.	388-825-278	Are there any educational requirements for individual providers? [Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-278, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-278, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-170	Community alternatives program (CAP). [99-19-104, recodified as § 388-825-170, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.020, 84-07-018 (Order 2086), § 275-27-800, filed 3/14/84.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.	388-825-280	What are the requirements for an individual supportive living service (also known as a companion home) contract? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-280, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-180	Eligible persons. [99-19-104, recodified as § 388-825-180, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.020, 84-07-018 (Order 2086), § 275-27-810, filed 3/14/84.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.	388-825-282	What is "abandonment of a vulnerable adult"? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-282, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.
388-825-190	Community alternatives program (CAP)—Services. [99-19-104, recodified as § 388-825-190, filed 9/20/99,		

388-825-284 Are providers expected to report abuse? [Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, § 388-825-284, filed 11/9/99, effective 12/10/99.] Repealed by 05-17-135, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.12.120.

**WAC 388-825-055 Authorization of services.** (1) The division's field services section shall be responsible for authorizing services agreed to by the person/family including, but not limited to:

(a) Placement to and from residential habilitation centers;

(b) Community residential services;

(c) Family support services;

(d) Nonresidential programs; and

(e) Employment/day programs.

(2) The division's authorization of state-only funded services shall be based on the services and funding available, subject to the following limitations:

(a) Persons must meet the programmatic and financial eligibility requirements for the specific services;

(b) Funding for state-only paid services is available in the state operating budget; and

(c) SSP funding is not available to the client.

(3) The division will include the following persons in the process of determining which services will be authorized:

(a) The person; and

(b) The person's parent or guardian and may include:

(i) The person's advocate; or

(ii) Other responsible parties.

(4) Per RCW 71A.16.010 the division shall offer adults the choice of remaining in the community or admittance to a residential habilitation center if all of the following conditions exist:

(a) An RHC vacancy is available;

(b) Funding, specifically designated for this purpose in the state operating budget, is available for alternative community support services;

(c) The person or their family is requesting residential services;

(d) The person meets ICF/MR or nursing facility eligibility for the available RHC vacancy;

(e) The person is the most in need of residential services as determined by DDD after reviewing all persons determined eligible for ICF/MR or nursing facility level of care. DDD will make this selection based on the following criteria:

(i) The person is age eighteen or older;

(ii) The person's/family's health and safety is in jeopardy due to the lack of necessary residential support and supervision:

(A) Priority is given to eligible persons/families currently without necessary residential supports;

(B) Other eligible persons will be considered based on their risk of losing residential supports due to unstable or deteriorating circumstances.

(f) The person's alternative DDD funded community support services would cost seventy percent or more of the average RHC rate, assuming a minimum household size of three persons.

(5) If RHC capacity is not being used for permanent residents, the division will make these vacancies available for respite care or any other services the department determines

are needed and allowable within the rules governing the use of federal funds. Conditions for making these vacancies available for respite care include:

(a) Written approval of the division director or designee for admission if a child or adolescent to an RHC for respite care; and

(b) Respite care exceeding thirty days in a calendar year is subject to subsection (6) of this section.

(6) The division shall not make an emergency or temporary admission of a person to a residential habilitation center for thirty-one days or more without the written approval of the division director or the director's designee if the admission is not a choice provided under subsection (4) of this section. Additionally, the following conditions apply:

(a) Children twelve years of age and younger shall not be admitted to an RHC; and

(b) Admission of an adolescent to an RHC can only occur if:

(i) DDD determines that foster placement services cannot meet the emergency needs of the child/family; and

(ii) A voluntary placement plan is in place with DDD with the goal of community placement or family reunification; and

(iii) Progress towards placement planning is reported to the division director at least every ninety days.

(7) The division shall authorize county-funded services only when the service is included in a department contract and:

(a) The person is at least twenty-one years of age and is no longer attending school; or

(b) The person is age twenty and graduates prior to his/her July or August twenty-first birthday; or

(c) The child is two years of age or younger and eligible for early intervention services.

(8) The department shall require a person to participate in defraying the cost of services provided when mandated by state or federal regulation or statute.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW. 05-11-015, § 388-825-055, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-055, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-055, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-055, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. 98-20-044, § 275-27-230, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.16.020. 91-17-005 (Order 3230), § 275-27-230, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. 86-18-049 (Order 2418), § 275-27-230, filed 8/29/86; 84-15-058 (Order 2124), § 275-27-230, filed 7/18/84. Statutory Authority: RCW 71.20.070, 72.33.125 and 72.33.850. 82-06-034 (Order 1771), § 275-27-230, filed 3/1/82. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-230, filed 3/16/78; Order 1143, § 275-27-230, filed 8/11/76.]

**WAC 388-825-103 When will I receive written notice of decisions made by DDD?** You will receive written notice from DDD of the following decisions:

(1) The denial or termination of eligibility under WAC 388-825-030 and 388-825-035;

(2) The authorization, denial, reduction, or termination of services or the payment of SSP set forth in chapter 388-827 WAC that are authorized by DDD;



(3) The admission or readmission to, or discharge from a residential habilitation center.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW. 05-11-015, § 388-825-103, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.10.020, and 71A.16.040. 04-15-093, § 388-825-103, filed 7/16/04, effective 8/16/04.]

**WAC 388-825-120 When can I appeal department decisions through an administrative hearing process?** (1) Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision in this chapter shall prevail.

(2) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.

(3) You have the right to an administrative hearing to dispute the following department actions:

(a) Authorization, denial, reduction, or termination of services;

(b) Authorization, denial, or termination of eligibility;

(c) Authorization, denial, reduction, or termination of payment of SSP authorized by DDD set forth in chapter 388-827 WAC;

(d) Admission or readmission to, or discharge from, a residential habilitation center;

(e) Refusal to abide by your request not to send notices to any other person;

(f) Refusal to comply with your request to consult only with you;

(g) A decision to move you to a different type of residential service;

(h) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-390;

(i) An unreasonable delay to act on an application for eligibility or service;

(j) A claim the client, former client, or applicant owes an overpayment debt.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-120, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-120, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-120, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.16.020. 91-17-005 (Order 3230), § 275-27-500, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. 90-04-074 (Order 2997), § 275-27-500, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 71.20.070. 86-18-049 (Order 2418), § 275-27-500, filed 8/29/86. Statutory Authority: RCW 72.33.161. 84-15-038 (Order 2122), § 275-27-500, filed 7/13/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-500, filed 3/16/78; Order 1143, § 275-27-500, filed 8/11/76.]

**WAC 388-825-125 How do I request an administrative hearing?** (1) Your notice of the department decision will include instructions on how to file an administrative hearing, where to send it, and the length of time you have to file for a hearing.

(2) Your request may be made orally or in writing.

(3) You may request assistance in requesting an administrative hearing by calling DDD staff as stated in WAC 388-825-135.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-125, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-130 How long do I have to file a request for an administrative hearing?** (1) You have to request an administrative hearing within ninety days of receipt of the notification of the decision you are disputing.

(2) You must request an administrative hearing within the ten-day notice period, as described in WAC 388-458-0040 (1), (2) and (3), if you wish to maintain current services during the appeal process.

(3) The notification sent to you will include the date that the ten-day notice period ends.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-130, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-135 What if I need help to request an administrative hearing?** (1) You may call the department staff person listed in your notification letter and tell them you want to appeal the decision. The department staff person will notify the office of administrative hearings on your behalf.

(2) An oral request for an administrative hearing is complete if it contains enough information to identify the person making the request, the DDD action, and the case involved in the hearing request.

(3) The effective date of an oral request for an administrative hearing is the date that someone makes a complete oral request for hearing to any DDD representative in person or by leaving a message on the automated voice mail system of any DDD field office.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-135, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-140 Who else can help me appeal a department decision?** Department staff may assist you in requesting an administrative hearing. However, you can authorize anyone except an employee of the department to represent you at an administrative hearing.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-140, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-145 Will my benefits continue if I request an administrative hearing?** (1) If you request an administrative hearing within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:

(a) Terminate your eligibility;

(b) Reduce or terminate your services; or

(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC.

(2) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(3) The department will take no action to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(4) After the administrative hearing, you may have to pay back continued benefits you get, as described in chapter 388-410 WAC, if the administrative hearing decision is in favor of the department.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-145, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-150 When can the department proceed to take action during my appeal?** The department will proceed to take action during your appeal if:

(1) It is an eligibility denial and you are not currently an eligible client.

(2) Your DDD eligibility has expired, per WAC 388-823-0010 and WAC 388-823-1040.

(3) There is no longer funding for state-only funded service.

(4) The state-only funded service no longer exists, the Medicaid state plan has been amended, or the HCBS waiver agreement with the federal Centers for Medicare and Medicaid has been amended.

(5) The administrative law judge or review judge rules that you have caused unreasonable delay in the proceedings.

(6) You are in imminent jeopardy.

(7) Your provider is no longer qualified to provide services due to:

(a) A lack of a contract;

(b) Decertification;

(c) Revocation or suspension of a license; or

(d) Lack of required registration, certification, or licensure.

(8) The parent of a person under the age of eighteen or the legal guardian approves the department's decision.

(9) You did not file your request for an administrative hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(10) You:

(a) Tell us in writing that you do not want continued benefits;

(b) Withdraw your administrative hearing request in writing; or

(c) Do not follow through with the administrative hearing process.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-150, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-155 What are my appeal rights if I am appealing a decision to move me from a state residential habilitation center to the community?** The procedures in RCW 71A.10.050(2) govern the proceeding.

(1) The department will take no action until there is a final decision on your appeal to move you from a state residential habilitation center to the community unless you or your legal representative consent or the administrative law judge or review judge rules that you have caused an unreasonable delay in the proceedings.

(2) The burden of proof is on the department.

(3) The burden of proof is whether the proposed placement is in your best interest.

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[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-155, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-160 When will a decision on my appeal be made?** The administrative law judge shall issue a hearing decision within ninety calendar days of the date the hearing is requested.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-160, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-165 Can I appeal the initial order of the administrative law judge?** You may file a petition for administrative review, pursuant to chapter 388-02 WAC.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-165, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400?** A client/legal representative may choose a qualified individual, agency, or licensed provider. The intent of WAC 388-825-300 through 388-825-400 is to describe:

(1) Qualification for individuals and agencies providing DDD services in the client's residence or the provider's residence or other setting; and

(2) Conditions under which the department will pay for the services of an individual provider or a home care agency provider or other provider.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-300, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-305 What service providers are governed by the qualifications in these rules?** These rules govern individuals and agencies contracted with to provide:

(1) Respite care services;

(2) Companion home services;

(3) Personal care services through the Medicaid Personal Care program or DDD HCBS Basic, Basic Plus, or CORE waivers;

(4) Alternative living services; or

(5) Attendant care services.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-305, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-310 What are the qualifications for providers?** (1) Individuals and agencies providing Medicaid personal care (chapter 388-71 and 388-106 WAC) and DDD HCBS waiver personal care (chapter 388-845 WAC) must meet the qualifications and training requirements in WAC 388-71-0500 through 388-71-05909.

(2) Individuals and agencies providing nonwaiver DDD home and community based services (HCBS) in the client's residence or the provider's residence or other setting must meet the requirements in WAC 388-825-300 through 388-825-400.

(3) Individuals and agencies providing HCBS waiver services must meet the provider qualifications in chapter 388-845 WAC for the specific service.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-310, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-315 What is your responsibility when you hire an individual respite care, attendant care or personal care provider?** You or your legal representative:

- (1) Have the primary responsibility for locating, screening, hiring, supervising, and terminating an individual respite care, attendant care or personal care provider;
- (2) Establish an employer/employee relationship with the individual provider; and
- (3) May receive assistance from the social worker/case manager or other resources in this process.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-315, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-316 How do I choose a companion home or alternative living provider?** You can choose a qualified companion home or alternative living provider contracted with DDD or refer your choice of provider to DDD for contracting if your provider does not have a contract with DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-316, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-320 How does a person become an individual provider, companion home provider or an alternative living provider?** In order to become an individual provider, companion home provider or an alternative living provider, a person must:

- (1) Be eighteen years of age or older.
- (2) Provide the social worker/case manager/designee with:
  - (a) Picture identification; and
  - (b) A Social Security card.
- (3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW.
- (a) Preliminary results may require a thumbprint for identification purposes.
- (b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.
- (4) Provide references as requested.
- (5) Complete orientation, if contracting as an individual provider.
- (6) Sign a service provider contract to provide services to a DDD client.
- (7) Meet additional requirements in WAC 388-825-355.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-320, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, companion home services, personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus or CORE waivers, alternative living services or attendant care services?** (1) As a provider of respite care, companion home services, personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus, or CORE waivers, alter-

native living services or attendant care services, you must be able to:

- (a) Adequately maintain records of services performed and payments received;
- (b) Read and understand the person's service plan. Translation services may be used if needed;
- (c) Be kind and caring to the DSHS client for whom services are authorized;
- (d) Identify problem situations and take the necessary action;
- (e) Respond to emergencies without direct supervision;
- (f) Understand the way your employer wants you to do things and carry out instructions;
- (g) Work independently;
- (h) Be dependable and responsible;
- (i) Know when and how to contact the client's representative and the client's case resource manager;
- (j) Participate in any quality assurance reviews required by DSHS;

(2) If you are working with an adult client of DSHS as a provider of alternative living, attendant care or companion home services, you must also:

- (a) Be knowledgeable about the person's preferences regarding the care provided;
- (b) Know the resources in the community the person prefers to use and enable the person to use them;
- (c) Know who the person's friends are and enable the person to see those friends; and
- (d) Enable the person to keep in touch with his/her family as preferred by the person.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-325, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-330 What is required for agencies wanting to provide care in the home of a person with developmental disabilities?** (1) Agencies providing personal care services must be licensed as a home care agency or a home health agency through the department of health.

(2) If a residential agency certified per chapter 388-820 WAC wishes to provide Medicaid personal care or respite care in the client's home, the agency must have home care agency certification or a home health license.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-330, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-335 Is a background check required of a home care agency provider?** In order to be a home care agency provider, a person must complete the department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-335, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-340 What is required for a provider to provide respite or residential service in their home?** Unless you are related to the client, or the client lives in a companion home, respite or residential services must take

place in a home licensed by DSHS. Services are limited to those age-specific services contained in your license.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-340, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-345 What "related" providers are exempt from licensing?** (1) Relatives of a specified degree are exempt from the licensing requirement and may provide out-of-home respite in their home.

(2) Relatives of specified degree include parents, grandparents, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, first cousin, niece or nephew.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-345, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, personal care services, companion home services, or alternative living services?** (1) If you are an individual providing personal care services for adults, you must meet the training requirements in WAC 388-71-05665 through 388-71-05909.

(2) If you are an individual contracted to provide companion homes services or alternative living services, you must:

- (a) Have a high school diploma or GED;
- (b) Successfully complete DDD specialty training within the first six months of beginning service; and
- (c) Complete ten hours of continuing education related to the job responsibilities each subsequent calendar year.

(3) If you provide personal care for children, or provide respite care, there is no required training but DDD retains the authority to require training of any provider.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-355, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-360 How does an individual terminate employment as a provider?** State law makes it a crime to abandon a vulnerable adult. "Abandon" means leaving a person without the means or ability to obtain any of the basic necessities of life.

(1) If an individual wishes to "quit" or terminate employment as a provider, the individual must give at least two weeks written notice to his/her employer, their representative (if applicable) and the DDD case manager.

(2) The individual will be expected to continue working until the termination date unless otherwise determined by DSHS.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-360, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-365 Are providers expected to report abuse, neglect, exploitation or financial exploitation?** Providers are expected to report any abuse or suspected abuse immediately to child protective services, adult protective services or local law enforcement and make a follow-up call to the person's case manager.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-365, filed 8/19/05, effective 9/19/05.]

[2006 WAC Supp—page 1704]

**WAC 388-825-370 What are the responsibilities of an individual or home care agency when employed to provide respite care, attendant care, personal care, companion home services or alternative living services to a client?** An individual or home care agency employed to provide respite care, attendant care, personal care, companion home services, or alternative living services must:

(1) Understand the client's individual service plan or plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's service plan, within the scope of practice in WAC 388-71-0215 and 388-71-0230;

(3) Accommodate client's individual preferences and differences in providing care, within the scope of the service plan;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the service plan;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department immediately when unable to staff/serve the client; and

(9) Notify the department when the individual or home care agency will no longer provide services. Notification to the client/legal guardian must:

- (a) Give at least two weeks' notice, and
- (b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws, regulations and contract requirements.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-370, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, personal care, companion home services or alternative living services?** (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, personal care, companion home services or alternative living services who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(d) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(f) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05909; or

(g) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(2) The department will deny payment for the services of an individual or a home care agency providing companion home services or alternative living services to their natural/step/adoptive adult child.

(3) The department will deny payment for services of a legal representative appointed by the courts providing companion home services to the client for whom they are the legal representative.

(4) In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380, 388-825-381, 388-825-385 and 388-825-390.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-375, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-380 When can the department reject the client's choice of an individual respite care, attendant care or personal care provider?** The department may reject a client's request to have a family member or other person serve as his or her individual respite care, attendant care or personal care provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842;

(3) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;

(4) Other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-380, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-381 When can the department reject the client's choice of a companion home services or alternative living services provider?** The department can reject the client's choice of a companion home services or alternative living services provider for any reason listed in WAC 388-825-380 or when:

(1) The department has assessed the client to need more than forty hours of alternative living services, thereby requiring services be provided by a DDD certified supportive living agency per chapter 388-820 WAC; and/or

(2) The client's choice of companion home provider is the client's parent or court appointed legal representative unless the provider was contracted and paid to provide companion home services prior to February 2005.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-381, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-385 When can the department terminate or summarily suspend an individual respite care, attendant care, personal care, companion home services or alternative living services provider's contract?** The department may take action to terminate an individual respite care, attendant care, personal care, companion home services or alternative living services provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

(1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or

(7) Failure to respond appropriately to emergencies.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-385, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-390 When can the department otherwise terminate an individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services?** The department may otherwise terminate the individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

[Statutory Authority: RCW 71A.12.030, 71A.12.120. 05-17-135, § 388-825-390, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services?** If the department denies, terminates, or summarily (immediately) suspends the individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services, the client has the right to:

(1) A fair hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120; and

(2) Receive services from another currently contracted individual or home care agency, or other options the client is eligible for, if a contract is summarily suspended.

(3) The hearing rights afforded under this section are those of the client, not the individual provider.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 05-17-135, § 388-825-395, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-396 Does the provider of respite care, attendant care, personal care, companion home services or alternative living services have a right to a fair hearing?** (1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.

(2) The provider of respite care, attendant care, personal care, companion home services or alternative living services does not have a right to a fair hearing.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 05-17-135, § 388-825-396, filed 8/19/05, effective 9/19/05.]

**WAC 388-825-400 Self-directed care—Who must direct self-directed care?** Self-directed care under chapter 74.39 RCW must be directed by an adult client for whom the health-related tasks are provided. The adult client is responsible to train the individual provider in the health-related tasks which the client self-directs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 05-17-135, § 388-825-400, filed 8/19/05, effective 9/19/05.]

## Chapter 388-826 WAC

### VOLUNTARY PLACEMENT PROGRAM

#### WAC

388-826-0200	What happens if the voluntary placement ends?
388-826-0210	When the child leaves the voluntary placement program for any reason, what DDD services are available to the child and family when voluntary placement ends?
388-826-0220	Will a child or youth continue to receive special education or early intervention services while in VPP?
388-826-0230	What happens after a youth turns eighteen?
388-826-0240	What happens if a parent disagrees with a decision made by DDD?
388-826-0250	Does DDD make exceptions to the requirements in this chapter?

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-826-0100	What happens if the voluntary placement ends? [Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0100, filed 10/31/02, effective 12/1/02.] Decodified by 06-01-107, filed 12/21/05, effective 12/21/05. Recodified as WAC 388-826-0200.
388-826-0105	When the child leaves the voluntary placement program for any reason, what DDD services are available to the child and family when voluntary placement ends? [Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0105, filed 10/31/02, effective 12/1/02.] Decodified by 06-01-107, filed 12/21/05, effective 12/21/05. Recodified as WAC 388-826-0210.
388-826-0110	Will a child or youth continue to receive special education or early intervention services while in VPP? [Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0110, filed 10/31/02, effective 12/1/02.] Decodified by 06-01-107, filed 12/21/05, effective 12/21/05. Recodified as WAC 388-826-0220.
388-826-0115	What happens after a youth turns eighteen? [Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-

0115, filed 10/31/02, effective 12/1/02.] Decodified by 06-01-107, filed 12/21/05, effective 12/21/05. Recodified as WAC 388-826-0230.

388-826-0120 What happens if a parent disagrees with a decision made by DDD? [Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0120, filed 10/31/02, effective 12/1/02.] Decodified by 06-01-107, filed 12/21/05, effective 12/21/05. Recodified as WAC 388-826-0240.

388-826-0125 Does DDD make exceptions to the requirements in this chapter? [Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0125, filed 10/31/02, effective 12/1/02.] Decodified by 06-01-107, filed 12/21/05, effective 12/21/05. Recodified as WAC 388-826-0250.

**WAC 388-826-0200 What happens if the voluntary placement ends?** The child must be returned to the physical care of the child's legal parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The agreement as described in RCW 74.13.350, between DDD and legal parents is completely voluntary. Per RCW 74.13.350, any party may terminate the agreement at any time.

[06-01-107, recodified as § 388-826-0200, filed 12/21/05, effective 12/21/05. Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0100, filed 10/31/02, effective 12/1/02.]

**WAC 388-826-0210 When the child leaves the voluntary placement program for any reason, what DDD services are available to the child and family when voluntary placement ends?** Depending on availability of funds, the child and family may be eligible for other DDD programs and that would support the child.

[06-01-107, recodified as § 388-826-0210, filed 12/21/05, effective 12/21/05. Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0105, filed 10/31/02, effective 12/1/02.]

**WAC 388-826-0220 Will a child or youth continue to receive special education or early intervention services while in VPP?** (1) Early intervention services are available to a child, birth through thirty-five months when in VPP and when that child meets the early intervention eligibility criteria.

(2) When a child or youth meets eligibility criteria for special education programs, ages three to twenty-one years, the child or youth continues to receive special education services through their local public school district.

(3) Office of superintendent of public instruction is responsible for the special education program for the eligible children, ages three to twenty-one years, RCW 28A.155.220 allows that children and youth who meet eligibility criteria may remain in special education until graduation, if that occurs during the school year.

[06-01-107, recodified as § 388-826-0220, filed 12/21/05, effective 12/21/05. Statutory Authority: RCW 74.13.350, 02-22-057, § 388-826-0110, filed 10/31/02, effective 12/1/02.]

**WAC 388-826-0230 What happens after a youth turns eighteen?** When a youth turns eighteen, and is considered an adult, while in the voluntary placement program, the youth may remain in the child foster home, in VPP, under the following circumstances:

(1) Youth remains in the education or vocational program in the local public school district in which he/she has been enrolled until graduation or age twenty-one, whichever

is earlier, per WAC 392-172-030(2), RCW 74.13.031 (10) and (13), 28A.155.020, and 28A.155.030;

(2) The placement remains intact and does not disrupt;

(3) When needed, youth who turns eighteen can self-administer medication;

(4) Youth cannot remain in foster care, living in a child foster home, and in VPP, after eighteen years of age when:

(a) The child foster home placement disrupts;

(b) The youth leaves education or vocational program; or

(c) The youth who turns eighteen needs someone to administer medication.

Dependency guardianships end at age eighteen. If a youth has been in a legal guardianship, under chapter 11.88 RCW and if the reason for guardianship was the minority of the child the guardianship ends.

[06-01-107, recodified as § 388-826-0230, filed 12/21/05, effective 12/21/05. Statutory Authority: RCW 74.13.350. 02-22-057, § 388-826-0115, filed 10/31/02, effective 12/1/02.]

**WAC 388-826-0240 What happens if a parent disagrees with a decision made by DDD?** If a parent disagrees with a decision made by DDD staff, the parent has the right to pursue the appeal process, as outlined in RCW 71A.10.050 and chapter 388-02 WAC.

[06-01-107, recodified as § 388-826-0240, filed 12/21/05, effective 12/21/05. Statutory Authority: RCW 74.13.350. 02-22-057, § 388-826-0120, filed 10/31/02, effective 12/1/02.]

**WAC 388-826-0250 Does DDD make exceptions to the requirements in this chapter?** DDD may grant exceptions to the requirements specified in this chapter as long as the DDD director approves the request in writing within sixty days.

[06-01-107, recodified as § 388-826-0250, filed 12/21/05, effective 12/21/05. Statutory Authority: RCW 74.13.350. 02-22-057, § 388-826-0125, filed 10/31/02, effective 12/1/02.]

## Chapter 388-827 WAC

### STATE SUPPLEMENTARY PAYMENT PROGRAM

#### WAC

388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?

388-827-0145 How much money will I receive?

**WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?** (1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,

(vi) Agency in-home specialized support,

(vii) Group care basic maintenance,

(viii) Group care specialized support,

(ix) Transportation,

(x) Agency attendant care,

(xi) Child care,

(xii) Professional services,

(xiii) Nursing services,

(xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

(i) Adult family home,

(ii) Adult residential care facility,

(iii) Alternative living,

(iv) Group home,

(v) Supported living,

(vi) Agency attendant care,

(vii) Supported living or other residential service allowance,

(viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received Medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, and chapter 71A.12 RCW. 05-10-039, § 388-827-0115, filed 4/28/05, effective 5/29/05. Statutory Authority: RCW 71A.12.030 and 71A.12.120. 04-15-094, § 388-827-

0115, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0115, filed 12/29/03, effective 1/29/04.]

### **WAC 388-827-0145 How much money will I receive?**

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) For family support services, refer to WAC 388-825-200 through 388-825-284.

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum allowed may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP.

(c) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115 (5), you will receive one hundred dollars per month.

(a) For individuals whose initial CARE assessment was completed prior to January 1, 2005, January 2005 is the first month for which payment is made.

(b) For individuals whose initial CARE assessment is completed after December 31, 2004, the first month for which payment is made is the month in which the results of the initial CARE assessment are effective.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, and chapter 71A.12 RCW. 05-10-039, § 388-827-0145, filed 4/28/05, effective 5/29/05. Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0145, filed 12/29/03, effective 1/29/04.]

## **Chapter 388-845 WAC**

### **DDD HOME AND COMMUNITY BASED SERVICES WAIVERS**

#### **WAC**

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**WAC 388-845-0001 Definitions.** "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate Services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CAP waiver" means the community alternatives program waiver.

"CARE" means the comprehensive assessment and reporting evaluation.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"Department" means the department of social and health services.

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"HCBS waivers" means home and community based services waivers.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs.

"Providers" means an individual or agency who is licensed, certified and/or contracted to provide services to you.

"Respite assessment" means a series of questions about you and your caregiver used to determine the amount of respite care available to you.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment, a benefit administered by the department intended to augment an individual's SSI.

"State funded services" means services that are funded entirely with state dollars.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0001, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0005 What are home and community based services (HCBS) waivers?** (1) Home and community based services (HCBS) waivers are services approved by the Centers For Medicare and Medicaid Services (CMS) under section 1915 (c) of the Social Security Act as an alternative to

intermediate care facility for the mentally retarded (ICF/MR) care.

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an ICF/MR as defined in chapters 388-835 and 388-837 WAC.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0005, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0010 What is the purpose of HCBS waivers?** The purpose of HCBS waivers is to provide services in the community to individuals with ICF/MR level of need to prevent their placement in an ICF/MR.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0010, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)?** DDD has replaced its community alternatives program (CAP) waiver with four HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) CORE waiver; and
- (4) Community protection waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0015, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0020 When were these four HCBS waivers effective?** The four DDD HCBS waivers were effective April 1, 2004.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0020, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0025 Does this change in waivers affect the waiver services I am currently receiving?** Your services will not be disrupted with this transfer to new waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0025, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services?** You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 through 388-845-0090.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care.

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(7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0030, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria?** If you are not currently enrolled in a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0035, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver?** Each waiver has a limit on the number of people who can be served in a waiver year. In addition, DDD has the authority to limit enrollment into the waivers based on availability of funding for new waiver participants.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0040, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0041 What is DDD's responsibility to provide my services under the waivers administered by DDD?** If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your plan of care, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and WAC 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0041, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?** When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and safety needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060(9).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0045, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0050 How do I request to be enrolled in a waiver?** You can contact DDD and request to be enrolled in a waiver at any time.

(1) Your request for waiver enrollment will be documented by DDD in a statewide data base.

(2) When there is capacity available to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be enrolled.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0050, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0051 How will I be notified of the decision by DDD to enroll me in a waiver?** DDD will notify you in writing of its decision to enroll you in a waiver or its decision to deny your request to be enrolled in a waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0051, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0055 How do I remain eligible for the waiver?** If you are already on a HCBS waiver, you must continue to meet eligibility criteria.

(1) DDD completes a reassessment at least every twelve months to determine if you continue to meet all of the eligibility requirements in WAC 388-845-0030.

(2) You must receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b).

(3) Your plan of care, CARE assessment/reassessment and respite assessment/reassessment must be done in person.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0055, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0060 Can my waiver eligibility be terminated?** DDD may terminate your waiver eligibility if DDD determines that your health and safety needs cannot be met in your current waiver or for one of the following reasons:

(1) You no longer meet one of the requirements listed in WAC 388-845-0030;

(2) You no longer need waiver services;

(3) You do not use a waiver service at least once in every thirty consecutive days;

(4) You are on the community protection waiver and choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(5) You choose to disenroll from the waiver;

(6) You reside out of state;

(7) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(8) You refuse to participate with DDD in:

(a) Service planning;

(b) Required quality assurance and program monitoring activities; or

(c) Accepting services agreed to in your plan of care as necessary to meet your health and safety needs.

(9) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

(a) At the end of the twelfth month following the effective date of your current plan of care, as described in WAC 388-845-3060; or

(b) On March 31st, the end of the waiver fiscal year, whichever date occurs first.

(10) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

(11) Your needs exceed what can be provided under the CORE or community protection waiver as specified in WAC 388-845-3085.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0060, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?** If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including Medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded DDD services is based upon availability of funding and program eligibility for a particular service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0065, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0070 What determines if I need ICF/MR level of care?** DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses its department-approved assessment and/or other information specified in WAC 388-845-0085.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0070, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0075 How is a child age twelve or younger assessed for ICF/MR level of care?** If you are age twelve or younger, DDD assesses you for ICF/MR level of care using the "child's assessment of ICF/MR level of care—current support needs" form. You must have support needs exceeding what is expected of others of the same age.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0075, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0080 What score indicates ICF/MR level of care if I am age twelve or younger?** (1) If you are age five or younger you need major or moderate support in five of nine tasks.

(2) If you are age six through twelve, you need major or moderate support in seven of nine of the tasks in (3) below.

(3) The form indicates certain tasks that require major support and which require moderate or major support.

(a) Major support for:

- (i) Dressing and grooming self;
- (ii) Toileting self.

(b) Major or moderate support for:

- (i) Eating;
- (ii) Mobility;
- (iii) Communication;
- (iv) Making choices and taking responsibility;
- (v) Exploring one's environment;
- (vi) Supports needed to meet therapy and health needs;

or

(vii) Family/caregiver support required to maintain the child at home.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0080, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0085 If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care?** For children age twelve or younger:

(1) If you do not have a qualifying score for determining ICF/MR level of care using the department approved assessment, you may provide DDD other current information that provides evidence of your need for waiver services.

(2) This additional information may include occupational therapy (OT), physical therapy (PT), psychological, nursing, social work, speech and hearing, or other professional evaluations that reflect current needs.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0085, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0090 How is a person age thirteen or older assessed for ICF/MR level of care?** If you are age thirteen or older, DDD assesses you for ICF/MR level of care using the "Assessment of ICF/MR level of care—Current support needs" form.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0090, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0095 What score indicates ICF/MR level of care if I am age thirteen or older?** If you are age thirteen or older, you must have a qualifying score of at least forty in responses to twenty questions assessing your residential, school or employment, and social support needs.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0095, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0096 If I am age thirteen or older, what if my score on the current needs assessment does not indicate the need for ICF/MR level of care?** If you are age thirteen or older and your current needs assessment does not indicate the need for ICF/MR level of care, you are not eligible for an HCBS waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0096, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0100 What determines which waiver I am assigned to?** DDD will assign you to a waiver based on the following criteria:

(1) If you were on the CAP waiver as of March 2004, your initial assignment to the Basic, Basic Plus, CORE, or community protection waiver was based on:

(a) Services you received from DDD in October 2002 through September 2003; and

(b) Services you were authorized to receive in October, November and December 2003.

(2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.

(3) Additional criteria apply to the assignment to the community protection waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0100, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0105 What criteria determine assignment to the community protection waiver?** DDD may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent crimes.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Plan of care (POC);

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0105, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0110 Are there limitations to the waiver services I can receive?** There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care.

(2) Mental health stabilization services may be added to your plan of care after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your assessed needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0110, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services?** If you are enrolled in a DDD HCBS waiver:

(1) You are not eligible for state-only funding for DDD services; and

(2) You are not eligible for Medicaid personal care.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0115, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?** Your participation in the new waivers does not affect your continued receipt of state supplemental payment from DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0120, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0200 What waiver services are available to me?** Each of the four HCBS waivers has a different scope of service and your service plan defines the waiver services available to you.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0200, filed 12/13/05, effective 1/13/06.]

#### WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Physical therapy Specialized medical equipment/ supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1425 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6500 per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined respite assessment
	Personal care	Limits are determined by CARE assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for services contained in the Basic waiver	\$6000 per year; Preauthorization required

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0205, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0210 Basic Plus waiver services.**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6070 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$9500 per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE assessment
	Respite care	Limits are determined by respite assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance in only for services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0210, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0215 CORE waiver services.**

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations  Occupational therapy Respite care Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	
	Community access Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	
	Personal care	
		Limits determined by a mental health professional or DDD
		Limited by CARE assessment

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0215, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0220 Community protection waiver services.**

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Sexual deviancy evaluation	

Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	
Residential habilitation	
Person-to-person Prevocational services Supported employment	
MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0220, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0300 What are adult family home (AFH) services?** Per RCW 70.128.010 an adult family home (AFH) is a regular family abode in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the service. Adult family homes (AFH) may provide residential care to adults in the Basic Plus waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0300, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0305 Who is a qualified provider of AFH services?** The provider of AFH services must be licensed and contracted with ADSA as an AFH who has successfully completed the DDD specialty training provided by the department.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0305, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0310 Are there limits to the AFH services I can receive?** Adult family homes services are limited by the following:

- (1) AFH services are defined and limited per chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined by and limited to department published rates for the level of care generated by CARE.
- (3) AFH reimbursement cannot be supplemented by other department funding.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0310, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0400 What are adult residential care (ARC) services?** Adult residential care (ARC) facilities may provide residential care to adults. This service is available in the Basic Plus waiver.

(1) An ARC is a licensed boarding home for seven or more unrelated adults.

(2) Services include, but are not limited to, individual and group activities; assistance with arranging transportation; assistance with obtaining and maintaining functional aids and equipment; housework; laundry; self-administration of medications and treatments; therapeutic diets; cuing and providing physical assistance with bathing, eating, dressing, locomotion and toileting; stand-by one person assistance for transferring.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0400, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0405 Who is a qualified provider of ARC services?** The provider of ARC services must:

- (1) Be a licensed boarding home;
- (2) Be contracted with ADSA to provide ARC services; and
- (3) Have completed the required and approved DDD specialty training.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0405, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0410 Are there limits to the ARC services I can receive?** ARC services are limited by the following:

- (1) ARC services are defined and limited by boarding home licensure and rules in chapter 388-78A WAC, and chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined and limited to department published rates for the level of care generated by CARE.
- (3) ARC reimbursement cannot be supplemented by other department funding.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0410, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0500 What is behavior management and consultation?** (1) Behavior management and consultation may be provided to persons on any of the four HCBS waivers and include the development and implementation of programs designed to support waiver participants using:

- (a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0500, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0505 Who is a qualified provider of behavior management and consultation?** The provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Registered counselor; or
- (11) Polygrapher.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0505, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0510 Are there limits to the behavior management and consultation I can receive?** The following limits apply to your receipt of behavior management and consultation:

- (1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.
- (2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a mental health stabilization service.
- (3) DDD reserves the right to require a second opinion from a department-selected provider.
- (4) Behavior management and consultation not provided as a mental health stabilization service requires prior approval by DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0510, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0600 What is community access?** Community access is a service provided in the community to enhance or maintain the person's competence, integration, physical or mental skills.

- (1) If you are age sixty-two or older, this service is available to assist you to participate in activities, events and organizations in the community in ways similar to others of retirement age.
- (2) This service is available to adults in the Basic, Basic Plus, and CORE waiver.

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[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0600, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0605 Who is a qualified provider of community access?** The provider of community access must be a county or an individual or agency contracted with a county or DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0605, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0610 Are there limits to community access I can receive?** The following limits apply to your receipt of community access:

- (1) You must be age sixty-two or older.
- (2) You cannot be authorized to receive community access services if you receive prevocational services or supported employment services.
- (3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0610, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0700 What is a community guide service?** Community guide service increases access to informal community supports. Services are short-term and designed to develop creative, flexible and supportive community resources for individuals with developmental disabilities. This service is available in Basic, Basic Plus and CORE waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0700, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0705 Who is a qualified community guide?** Any individual or agency contracted with DDD as a "community guide" is qualified to provide this service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0705, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0710 Are there limitations to the community guide services I can receive?** (1) You may not receive community guide services if you are receiving residential habilitation services as defined in WAC 388-845-1500 because your residential provider can meet this need.

(2) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0710, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0750 What are community transition services?** (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for an individual to establish his or her basic living arrangement) associated with moving from an institutional setting to a community setting and receiving services from a DDD certi-



fied residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy and use a community domicile;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0750, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0755 Who are qualified providers of community transition services?** (1) Providers of community transition services for individuals in the CORE waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1505.

(2) Providers of community transition services for individuals in the community protection waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1510.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0755, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0760 Are there limitations to community transition services I can receive?** (1) Community transition services do not include:

(a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD or DVD players; and

(b) Computers whose use is primarily diversional or recreational.

(2) Community transition services are available only to individuals that are moving from an institution to a community setting and are enrolled in either the CORE or community protection waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0760, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0800 What is emergency assistance?**

Emergency assistance is a temporary increase to the yearly dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0800, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0805 Who is a qualified provider of emergency assistance?** The provider of the service you need

to meet your emergency must meet the provider qualifications for that service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0805, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0810 How do I qualify for emergency assistance?** You qualify for emergency assistance only if you have used all of your waiver funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0810, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0820 Are there limits to my use of emergency assistance?** All of the following limitations apply to your use of emergency assistance:

(1) Prior authorization is required based on a reassessment of your plan of care to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care (POC);

(3) Emergency services are limited to the scope of services in your waiver;

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; or

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0820, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0900 What are environmental accessibility adaptations?** (1) Environmental accessibility adaptations are available in all of the HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to

accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0900, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?** The provider making these environmental accessibility adaptations must be a registered contractor per chapter 18.27 RCW and contracted with DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0905, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0910 What limitations apply to environmental accessibility adaptations?** The following service limitations apply to environmental accessibility adaptations:

- (1) Prior approval by DDD is required.
- (2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.
- (3) Environmental accessibility adaptations cannot add to the total square footage of the home.
- (4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0910, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1000 What are extended state plan services?** Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under Medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state Medicaid plan. These services are available under all four HCBS waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1000, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1010 Who is a qualified provider of extended state plan services?** Providers of extended state plan services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1010, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1015 Are there limits to the extended state plan services I can receive?** (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under Medicaid and any other private health insurance plan;

- (2) The department does not pay for treatment determined by DSHS to be experimental;

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- (3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department reserves the right to require a second opinion from a department-selected provider.

(b) The department will require evidence that you have accessed your full benefits through Medicaid and private insurance before authorizing this waiver service.

- (4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1015, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1100 What are mental health crisis diversion bed services?** Mental health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home or licensed or certified setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1100, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?** Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per chapter 388-101 WAC; or
- (2) Other department licensed or certified agencies.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1105, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1110 What are the limits of mental health crisis diversion bed services?** (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

- (2) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

- (3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1110, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1150 What are mental health stabilization services?** Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in all four waivers to adults determined by mental health professionals or DDD to be at risk of insti-

tutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Skilled nursing services;
- (3) Specialized psychiatric services; or
- (4) Mental health crisis diversion bed services.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1150, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1155 Who are qualified providers of mental health stabilization services?** Providers of these mental health stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1155, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1160 Are there limitations to the mental health stabilization services that I can receive?** (1) Mental health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) The costs of mental health stabilization services do not count toward the dollar limitations for aggregate services in the Basic and Basic Plus waiver.

(3) Mental health stabilization services require prior approval by DDD or its designee.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1160, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1200 What is a "person-to-person" service?** "Person-to-person" is a day program service intended to assist participants to progress toward employment goals through individualized planning, skill instruction, information and referral, and one to one relationship building. This service may be provided in addition to community access, prevocational services, or supported employment. This service is available to adults in all four HCBS waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1200, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1205 Who is a qualified provider of person-to-person services?** The provider of "person-to-person" services must be a county or an individual or agency contracted with a county or DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1205, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1210 Are there limits to the person-to-person service I can receive?** (1) You must be age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

(2) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1210, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1300 What are personal care services?** Personal care services are the provision of assistance with personal care tasks as defined in WAC 388-106-0010, personal care services. These services are available in the Basic, Basic Plus, and CORE waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1300, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1305 Who are the qualified providers of personal care services?** (1) Qualified providers of personal care services may be individuals or licensed homecare agencies contracted with DDD.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing Medicaid personal care providers in WAC 388-71-05670 through 388-71-05799.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1305, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1310 Are there limits to the personal care services I can receive?** (1) You must meet the programmatic eligibility for Medicaid personal care in chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE) or children's comprehensive assessment.

(2) The maximum hours of personal care you may receive are determined by the approved department assessment for Medicaid personal care services.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1310, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1400 What are prevocational services?** Prevocational services prepare an adult for paid or unpaid employment through the teaching of such concepts as compliance, attendance, task completion, problem solving and safety. These services are available in all four HCBS waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1400, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1405 Who are the qualified providers of prevocational services?** Providers of prevocational services must be a county or an individual or agency contracted with a county or DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1405, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1410 Are there limits to the prevocational services I can receive?** The following limitations apply to your receipt of prevocational services:

- (1) You must be age twenty-one and graduated from high school or age twenty-two or older.
- (2) You are not expected to be competitively employed within one year (excluding supported employment programs).

(3) You cannot be authorized to receive prevocational services if you receive community access services or supported employment services.

(4) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1410, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1500 What are residential habilitation services?** Residential habilitation services (RHS) are available in the CORE and community protection waivers.

- (1) Residential habilitation services include assistance:
  - (a) With personal care and supervision; and
  - (b) To learn, improve or retain social and adaptive skills necessary for living in the community.
- (2) Residential habilitation services may provide instruction and support addressing one or more of the following outcomes:
  - (a) Health and safety;
  - (b) Personal power and choice;
  - (c) Competence and self-reliance;
  - (d) Positive recognition by self and others;
  - (e) Positive relationships; and
  - (f) Integration into the physical and social life of the community.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1500, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver?** Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

- (1) Individuals contracted with DDD to provide residential support as a "companion home" provider;
- (2) Individuals contracted with DDD to provide training as an "alternative living provider";
- (3) Agencies contracted with DDD and certified per chapter 388-101 WAC;
- (4) State-operated living alternatives (SOLA);
- (5) Licensed and contracted group care homes, group training homes, foster homes, child placing agencies, staffed residential homes or adult residential rehabilitation centers per WAC 246-325-0012.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1505, filed 12/13/05, effective 1/13/06.]

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**WAC 388-845-1510 Who are qualified providers of residential habilitation services for the community protection waiver?** Providers of residential habilitation services for participants of the community protection waiver are limited to state operated living alternatives (SOLA) and supported living providers who are contracted with DDD and certified under chapter 388-101 WAC as a residential community protection provider intensive supported living services (CP-ISLS).

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1510, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1515 Are there limits to the residential habilitation services I can receive?** (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the CORE or community protection waiver:

- (a) Room and board;
- (b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;
- (c) Activities or supervision already being paid for by another source;
- (d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) The following persons cannot be paid providers for your service:

- (a) Your spouse;
- (b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;
- (c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1515, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1600 What is respite care?** Respite care is intended to provide short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, and CORE waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1600, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1605 Who is eligible to receive respite care?** The person providing your care is eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

- (1) You live in a private home with an unpaid caregiver; or
- (2) You live with a paid caregiver who is:
  - (a) A natural, step or adoptive parent;
  - (b) A contracted companion home provider; or
  - (c) A licensed children's foster home provider.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1605, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1606 Can DDD approve an exception to the requirements in WAC 388-845-1605?** DDD may approve an exception to WAC 388-845-1605 above only through June 30, 2006 if all of the following conditions exist:

- (1) Your live-in caregiver is a relative as defined in WAC 388-825-345(2);
- (2) You were living with this caregiver in January 2005;
- (3) Your relative caregiver was receiving payment from the department as your caregiver in January 2005; and
- (4) You were enrolled in the Basic, Basic Plus, or CORE waiver in January 2005.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1606, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1610 Where can respite care be provided?** Respite care can be provided in the following location(s):

- (1) Individual's home or place of residence;
- (2) Relative's home;
- (3) Licensed children's foster home;
- (4) Licensed, contracted and DDD certified group home;
- (5) State operated living alternative (SOLA) and other DDD certified supported living settings;
- (6) Licensed boarding home contracted as an adult residential center;
- (7) Adult residential rehabilitation center;
- (8) Licensed and contracted adult family home;
- (9) Children's licensed group home, licensed staffed residential home, or licensed childcare center;
- (10) Other community settings such as camp, senior center, or adult day care center.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1610, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1615 Who are qualified providers of respite care?** Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family home;
- (5) Licensed and contracted adult residential care facility;
- (6) Licensed and contracted adult residential rehabilitation center under WAC 246-325-012;
- (7) Licensed childcare center under chapter 388-295 WAC;
- (8) Licensed child daycare center under chapter 388-295 WAC;
- (9) Adult daycare centers contracted with DDD;

(10) Certified provider per chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1615, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1620 Are there limits to the respite care I can receive?** The following limitations apply to the respite care you can receive:

(1) If you are in the Basic or Basic Plus waiver, a respite care assessment will determine how much respite you can receive per WAC 388-845-3005 through 388-845-3050.

(2) If you are in the CORE waiver, the plan of care (POC), not the respite assessment, will determine the amount of respite care you can receive.

(3) Prior approval by DDD is required to exceed fourteen days per month.

(4) Respite cannot replace:

- (a) Daycare while a parent or guardian is at work; and/or
- (b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(5) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(6) Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.

(7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210. The dollar limit governing aggregate services does not apply to skilled nursing services provided as part of mental health stabilization services per WAC 388-845-1100(2).

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1620, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1650 What are sexual deviation evaluations?** Sexual deviation evaluations are professional evaluations of sexual deviancy to determine the need for psychological, medical or therapeutic services. Sexual deviancy evaluations are available in all four waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1650, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1655 Who is a qualified provider of sexual deviation evaluations?** The provider of sexual deviation evaluations must:

- (1) Be a certified sexual offender treatment provider (SOTP); and
- (2) Meet the standards contained in WAC 246-930-030 (education required prior to examination) and WAC 246-930-040 (professional experience required prior to examination).

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1655, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1660 Are there limitations to the sexual deviation evaluations I can receive?** (1) The evaluations must meet the standards contained in WAC 246-930-320.

- (2) The costs of sexual deviation evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1660, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1700 What is skilled nursing?** (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, CORE, and community protection waivers.

- (2) Services include nurse delegation services provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

- (3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1700, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1705 Who is a qualified provider of skilled nursing services?** The provider of skilled nursing services must be a licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the Nurse Practice Act chapter 246-845 WAC and contracted with DDD to provide this service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1705, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive?** The following limitations apply to your receipt of skilled nursing services:

- (1) Skilled nursing services require prior approval by DDD.
- (2) The department and the treating professional determine the need for and amount of service.
- (3) The department reserves the right to require a second opinion by a department-selected provider.
- (4) Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.

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- (5) The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1710, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1800 What are specialized medical equipment and supplies?** (1) Specialized medical equipment and supplies are services to help individuals with their activities of daily living or to better participate in their environment. These services are available in all four HCBS waivers.

- (2) Included are devices, controls, appliances, and items necessary for life support; ancillary supplies and equipment necessary to the proper functioning of such items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1800, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?** The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1805, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?** The following limitations apply to your receipt of specialized medical equipment and supplies:

- (1) Prior approval by the department is required for each authorization.
- (2) The department reserves the right to require a second opinion by a department-selected provider.
- (3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.
- (4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.
- (5) Medications, prescribed or nonprescribed, and vitamins are excluded.
- (6) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1810, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1900 What are specialized psychiatric services?** (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all four HCBS waivers.

- (2) Service may be any of the following:
  - (a) Psychiatric evaluation,
  - (b) Medication evaluation and monitoring,

(c) Psychiatric consultation.

(3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1900, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1905 Who are qualified providers of specialized psychiatric services?** Providers of specialized psychiatric services must be one of the following licensed or registered, and contracted healthcare professionals:

- (1) Psychiatrist;
- (2) Psychiatric advanced registered nurse practitioner (ARNP); or
- (3) Physician assistant working under the supervision of a psychiatrist.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1905, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?** (1) Specialized psychiatric services are excluded if they are available through other Medicaid programs.

(2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a mental health stabilization service.

(3) Specialized psychiatric services provided as a mental health stabilization service require prior approval by DDD or its designee.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-1910, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2000 What is staff/family consultation and training?** (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all four HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; and
- (e) Augmentative communication systems.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2000, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training?** To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;

- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Registered counselor; or
- (15) Certified dietician.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2005, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?** (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2010, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2100 What is supported employment?** Supported employment provides intensive ongoing individual or group support in a work setting to adults with developmental disabilities. This service is available in all four HCBS waivers.

(1) Supported employment includes activities needed to sustain paid work by individuals receiving waiver services, including supervision and training.

(2) Supported employment is conducted in a variety of settings; particularly work sites in which persons without disabilities are employed.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2100, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2105 Who is a qualified provider of supported employment?** A supported employment provider must be a county, or agencies or individuals contracted with a county or DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2105, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2110 Are there limits to the supported employment I can receive?** The following limitations apply to your receipt of supported employment:

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) Payment will be made only for the adaptations, supervision, training, and support with the activities of daily living you require as a result of your disabilities.

(3) Payment is excluded for the supervisory activities rendered as a normal part of the business setting.

(4) You cannot be authorized to receive supported employment services if you receive community access services or prevocational services.

(5) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2110, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2200 What are transportation services?** Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care. This service is available in all four HCBS waivers.

(1) Transportation provides the person access to waiver services, specified by the plan of care.

(2) Whenever possible, the person must use family, neighbors, friends, or community agencies that can provide this service without charge.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2200, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2205 Who is qualified to provide transportation services?** The provider of transportation services can be an individual or agency contracted with DDD.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2205, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-2210 Are there limitations to the transportation services I can receive?** The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your waiver provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

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[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-2210, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3000 What is the process for determining the services I need?** Your service needs are determined through the ICF-MR level of care assessment and the service planning process.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) The ICF-MR level of care assessment identifies your need for waiver services.

(b) The "comprehensive assessment reporting evaluation (CARE)" will determine your eligibility and amount of personal care services.

(c) If you are in the Basic or Basic Plus waiver, a DDD respite assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care (POC) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3000, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3005 What is the waiver respite assessment?** The waiver respite assessment is a series of questions about you and your primary caregiver that will determine the amount of respite care available to you.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3005, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3010 Who must have a waiver respite assessment?** (1) If you are in the Basic or Basic Plus waiver and are interested in receiving respite care, and are eligible for respite care per WAC 388-845-1605, your personal care needs must first be assessed by CARE.

(2) A respite assessment will then determine the amount of respite care available to you.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3010, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3015 How is the waiver respite assessment administered?** The waiver respite assessment is administered by department staff during an in-person interview with you if you choose to be present, and at least one other person with knowledge of you, such as your primary caregiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3015, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3020 Who can be the respondent for the waiver respite assessment?** The respondent for your waiver respite assessment must be an adult who is well acquainted with you and can provide the information needed to complete the assessment, such as your primary caregiver.

(1) You cannot be the respondent for your own respite assessment.



(2) The department may select and interview additional respondents as needed to get complete and accurate information.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3020, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3025 How often is this waiver respite assessment completed?** Your waiver respite assessment must be completed at the time of your CARE assessment/reassessment.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3025, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3030 What items are assessed to determine my respite allocation?** The waiver respite assessment documents information about you and your caregiver. Information must reflect what is currently happening, not what may occur in the future or what has occurred more than thirty days ago. The information documented includes:

- (1) The level of monitoring you require, above and beyond what is typically required for persons of similar age;
- (2) Circumstances in your primary caregiver's life that may impact his/her care giving ability;
- (3) The effect of your disability on other household members;
- (4) Your primary caregiver's care giving responsibilities for others;
- (5) How many parents, legal representatives and/or primary caregivers live in the same household as you;
- (6) Availability of others to provide your care; and
- (7) Your disability related emotional or behavior issues and how that affects your caregiver; the frequency and severity of these issues; and what a caregiver does to help you manage these behaviors.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3030, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3035 How is the waiver respite assessment scored?** The responses to the waiver respite assessment are converted to a respite lid.

(1) The respite lid represents the maximum number of respite hours you are authorized to receive in a twelve-month period.

(2) You may use as many respite hours as you need, up to your assessed respite lid.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3035, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3040 When will the new respite assessment go into effect?** The new respite assessment will be effective at the time of your next CARE assessment/reassessment.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3040, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3045 How will I know the results of my respite assessment?** Your respite care allocation will be written into your plan of care as a separate, authorized service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3045, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3050 What is the effective date of my respite allocation?** Your respite care allocation is effective when your respite assessment is completed and authorized in your annual or amended POC.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3050, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3055 What is a waiver plan of care (POC)?** (1) The plan of care is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs.

(2) Your plan must include:

(a) The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs as specified in WAC 388-845-3000;

(b) Both paid and unpaid services you receive or need;

(c) How often you will receive each waiver service; how long you will need it; and who will provide it; and

(d) Your signature on the plan indicating your agreement.

(3) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3055, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3060 When is my plan of care effective?** Your plan of care is effective the date DDD signs and approves it.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3060, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3065 How long is my plan effective?** Your plan of care is effective through the last day of the twelfth month following the effective date.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3065, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3070 What happens if I do not sign my plan of care?** If DDD is unable to obtain the necessary signature on the plan of care from you or your legal representative, DDD will take one or more of the following actions:

(1) DDD will continue providing services as identified in your most current POC for up to thirty days from the date you

were notified of the plan to implement your most current POC.

(2) After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative.

(3) You will be provided written notification and appeal rights to this action to implement the new POC.

(4) Your appeal rights are in WAC 388-825-120 through 388-825-165.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3075, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3075 What if my needs change?** You may request a review of your plan of care at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your plan of care with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual plan of care.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3075, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver?** (1) If you are on the Basic or Basic Plus waiver and your assessed need for services exceeds the maximum permitted, DDD will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the Basic or Basic Plus waiver other than natural supports;

(c) Authorize emergency services up to six thousand dollars per year if your needs meet the definition of emergency services in WAC 388-845-0800.

(2) If emergency services and other efforts are not sufficient to meet your needs, you will be offered:

(a) An opportunity to apply for an alternate waiver that has the services you need;

(b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;

(c) Placement in an ICF/MR.

(3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3080, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3085 What if my needs exceed what can be provided under the CORE or community protection waiver?** (1) If you are on the CORE or community protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the CORE or community protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/MR.

(2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3085, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver?** If your identified health and welfare needs are less than what is provided in your current waiver, DDD may terminate you from your current waiver and enroll you in a waiver that meets but does not exceed your assessed need for waiver services.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3090, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-3095 Will I have to pay toward the cost of waiver services?** (1) Depending on your SSI status, Medicaid status, income and resources, you may be required to participate towards the cost of your care. DDD determines what amount, if any, you pay.

(2) If you live in a licensed facility, you participate from your earned and unearned income per rules in WAC 388-515-1510:

(a) If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.

(b) If you are eligible for SSI, you pay only for room and board.

(c) If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-3095, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-4000 What are my appeal rights under the waiver?** You have appeal rights under WAC 388-825-120 to the following decisions:

(1) Any denial, reductions, or termination of a service.

(2) A denial or termination of your choice of a qualified provider.

(3) Your termination from waiver eligibility.

(4) Denial of your request to receive ICF/MR services instead of waiver services.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-4000, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?** You do not have an appeal right to a denial to be enrolled in a waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-4005, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-4010 How do I appeal a department action?** (1) Your rights to appeal a department decision are in RCW 71A.10.050 and WAC 388-825-120 and are limited to an applicant, recipient, or former recipient of services from the division of developmental disabilities.

(2) If you want to appeal a department action, you must request an appeal within ninety days from receipt of the department notice of the action you are disputing.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-4010, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-4015 Will my services continue during an appeal?** Services may continue according to the provisions contained in WAC 388-825-145.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-4015, filed 12/13/05, effective 1/13/06.]

## Chapter 388-850 WAC COUNTY PLAN FOR DEVELOPMENTAL DISABILITIES

(Formerly chapter 275-25 WAC)

### WAC

388-850-035 Services—Developmental disabilities.  
388-850-045 Funding formula—Developmental disabilities.

**WAC 388-850-035 Services—Developmental disabilities.** (1) A county may purchase and provide services listed under chapter 71A.14 RCW.

(2) The department shall pay a county for department authorized services provided to an eligible developmentally disabled person.

(3) A county may purchase or provide authorized services. Authorized services may include, but are not limited to:

- (a) Early childhood intervention services;
- (b) Employment services;
- (c) Community access services;
- (d) Residential services;
- (e) Individual evaluation;
- (f) Program evaluation;
- (g) County planning and administration; and
- (h) Consultation and staff development.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW. 05-11-015, § 388-850-035, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-850-035, filed 12/29/03, effective 1/29/04. 99-19-104, recodified as § 388-850-035, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.14.030. 91-17-005 (Order 3230), § 275-25-520, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070, 72.33.125 and 72.33.850. 82-06-034 (Order 1771), § 275-25-520, filed 3/1/82. Statutory Authority: RCW 71.20.030, 71.20.050, and 71.20.070. 78-04-002 (Order 1278), § 275-25-520, filed 3/2/78; Order 1142, § 275-25-520, filed 8/12/76.]

**WAC 388-850-045 Funding formula—Developmental disabilities.** (1) For the purposes of this section, "county" shall mean the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties shall be based on the following criteria:

(a) Each county shall receive a base amount of funds. The amount shall be based on the prior biennial allocation, including any funds from budget provisos from the prior biennium, and subject to the availability of state and federal funds;

(b) The distribution of any additional funds provided by the legislature or other sources shall be based on a distribution formula which best meets the needs of the population to be served as follows:

(i) On a basis which takes into consideration minimum grant amounts, requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX home and community-based waivers, and the general population of the county, and special education enrollment as well as the population eligible for county-funded developmental disabilities services;

(ii) On a basis that takes into consideration the population numbers of minority groups residing within the county;

(iii) A biennial adjustment shall be made after these factors are considered; and

(iv) Counties not receiving any portion of additional funds pursuant to this formula shall not have their base allocation reduced due to application of this formula.

(c) Funding appropriated through legislative proviso, including vendor rate increases, shall be distributed to the population directed by the legislature utilizing a formula as directed by the legislature or using a formula specific to that population or distributed to identified people;

(d) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.

(3) A county may utilize seven or less percent of the county's allocated funds for county administrative expenses. A county may utilize more than seven percent for county administration with approval of the division director. A county electing to provide all services directly, in addition to county administration, is exempt from this requirement.

(4) The department may withhold five or less percent of allocated funds for new programs, for statewide priority programs, and for emergency needs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.14.040, and Title 71A RCW. 05-11-015, § 388-850-045, filed 5/9/05, effective 6/9/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-850-045, filed 12/29/03, effective 1/29/04. 99-19-104, recodified as § 388-850-045, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.14.040. 92-13-032 (Order 3404), § 275-25-530, filed 6/10/92, effective 7/11/92. Statutory Authority: RCW 71A.14.030. 91-17-005 and 91-17-025 (Orders 3230 and 3230A), § 275-25-530, filed 8/9/91 and 8/14/91, effective 9/9/91 and 9/14/91. Statutory Authority: RCW 69.54.040 and 71.24.190. 83-03-011 (Order 1936), § 275-25-530, filed 1/12/83; Order 1142, § 275-25-530, filed 8/12/76.]

**Chapter 388-865 WAC**  
**COMMUNITY MENTAL HEALTH AND**  
**INVOLUNTARY TREATMENT PROGRAMS**

**WAC**

388-865-0107	Peer counselor certification.
388-865-0150	Definitions.
388-865-0230	Community support services.
388-865-0335	Consumer enrollment.
388-865-0400	Community support service providers.
388-865-0420	Intake evaluation.
388-865-0430	Clinical record.
388-865-0453	Peer support services.
388-865-0610	Definitions.
388-865-0620	Scope.
388-865-0630	Time frame.

**DISPOSITION OF SECTIONS FORMERLY**  
**CODIFIED IN THIS CHAPTER**

388-865-0340	Consumer disenrollment. [Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0340, filed 5/31/01, effective 7/1/01.] Repealed by 05-17-154, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 71.24.035.
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**WAC 388-865-0107 Peer counselor certification.** The mental health division certifies consumers to provide peer support services.

(1) In order to be certified as a peer counselor, all applicants must meet the following requirements:

(a) Be a self-identified consumer of mental health services, as defined;

(b) Maintain registration as a counselor under chapter 18.19 RCW;

(c) Complete specialized training provided or contracted by the mental health division; and

(d) Successfully pass an examination administered by the mental health division or an authorized contractor.

(2) The training requirement specified in (2)(c) of this subsection is waived for consumers who were trained prior to October 1, 2004 by trainers approved by the mental health division, provided that all of the other requirements are met by January 31, 2005.

(3) A consumer whose request for certification is denied has the right to contest this decision by submitting a written request to the mental health division within twenty-eight calendar days of the date of notification:

(a) The request should include the consumer's name, address, and telephone number and a brief explanation of the issue and resolution being requested;

(b) The consumer also has the right to use the state administrative hearing process as described in chapter 388-02 WAC;

(c) A consumer who completes the administrative hearing process may request reconsideration in accordance with chapter 388-02 WAC but does not have recourse to review by the DSHS board of appeals.

[Statutory Authority: RCW 71.24.035 (5)(c), 71.24.037. 05-17-156, § 388-865-0107, filed 8/22/05, effective 9/22/05.]

**WAC 388-865-0150 Definitions.** "Adult" means a person on or after their eighteenth birthday. For persons eligible for the Medicaid program, adult means a person on or after his/her twenty-first birthday.

"Certified peer counselor" is defined as a consumer of mental health services who has met the registration, experience, and training requirements, has satisfactorily passed the examination, and has been issued a certificate by the mental health division as specified in WAC 388-865-0107.

"Child" means a person who has not reached his/her eighteenth birthday. For persons eligible for the Medicaid program, child means a person who has not reached his/her twenty-first birthday.

"Clinical services" means those direct age and culturally appropriate consumer services which either:

- (1) Assess a consumer's condition, abilities or problems;
- (2) Provide therapeutic interventions which are designed to ameliorate psychiatric symptoms and improve a consumer's functioning.

"Consumer" means a person who has applied for, is eligible for or who has received mental health services. For a child, under the age of thirteen, or for a child age thirteen or older whose parents or legal guardians are involved in the treatment plan, the definition of consumer includes parents or legal guardians.

"Consultation" means the clinical review and development of recommendations regarding the job responsibilities, activities, or decisions of, clinical staff, contracted employees, volunteers, or students by persons with appropriate knowledge and experience to make recommendations.

"Cultural competence" means a set of congruent behaviors, attitudes, and policies that come together in a system or agency and enable that system or agency to work effectively in cross-cultural situations. A culturally competent system of care acknowledges and incorporates at all levels the importance of language and culture, assessment of cross-cultural relations, knowledge and acceptance of dynamics of cultural differences, expansion of cultural knowledge and adaptation of services to meet culturally unique needs.

"Ethnic minority" or "racial/ethnic groups" means, for the purposes of this chapter, any of the following general population groups:

- (1) African American;
- (2) An American Indian or Alaskan native, which includes:

(a) A person who is a member or considered to be a member in a federally recognized tribe;

(b) A person determined eligible to be found Indian by the secretary of interior, and

(c) An Eskimo, Aleut, or other Alaskan native.

(d) A Canadian Indian, meaning a person of a treaty tribe, Metis community, or nonstatus Indian community from Canada.

(e) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off reservation Indian/Alaskan native community organization.

(3) Asian/Pacific Islander; or

(4) Hispanic.

"Medical necessity" or "medically necessary" - A term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity.

imity, or threaten to cause or aggravate a handicap, or cause or physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation or, where appropriate, no treatment at all.

**"Mental health division"** means the mental health division of the Washington state department of social and health services (DSHS). DSHS has designated the mental health division as the state mental health authority to administer the state and Medicaid funded mental health program authorized by chapters 71.05, 71.24, and 71.34 RCW.

**"Mental health professional"** means:

- (1) A psychiatrist, psychologist, psychiatric nurse or social worker as defined in chapters 71.05 and 71.34 RCW;
- (2) A person with a masters degree or further advanced degree in counseling or one of the social sciences from an accredited college or university. Such person shall have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the supervision of a mental health professional;
- (3) A person who meets the waiver criteria of RCW 71.24.260, which was granted prior to 1986;
- (4) A person who had an approved waiver to perform the duties of a mental health profession that was requested by the regional support network and granted by the mental health division prior to July 1, 2001; or
- (5) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the mental health division consistent with WAC 388-865-265 [388-865-0265].

**"Mental health specialist"** means:

- (1) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:
  - (a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and
  - (b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.
- (2) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:
  - (a) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of persons sixty years of age or older; and
  - (b) The equivalent of one year of full-time experience in the treatment of persons sixty years of age or older, under the supervision of a geriatric mental health specialist.
- (3) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group

under the supervision of an ethnic minority mental health specialist; and

(a) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(b) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority consumers.

(4) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, **"disabled"** means an individual with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(a) If the consumer is deaf, the specialist must be a mental health professional with:

- (i) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and
- (ii) Ability to communicate fluently in the preferred language system of the consumer.

(b) The specialist for consumers with developmental disabilities must be a mental health professional who:

- (i) Has at least one year's experience working with people with developmental disabilities; or
- (ii) Is a developmental disabilities professional as defined in RCW 71.05.020.

**"Older person"** means an adult who is sixty years of age or older.

**"Service recipient"** means for the purposes of a mental health prepaid health plan, a consumer eligible for the Title XIX Medicaid program.

**"Substantial hardship"** means that a consumer will not be billed for emergency involuntary treatment if he or she meets the eligibility standards of the psychiatric indigent inpatient program that is administered by the DSHS economic services administration.

**"Supervision"** means monitoring of the administrative, clinical, or clerical work performance of staff, students, volunteers, or contracted employees by persons with the authority to give direction and require change.

**"Underserved"** means consumers who are:

- (1) Minorities;
- (2) Children;
- (3) Older adults;
- (4) Disabled; or
- (5) Low-income persons.

[Statutory Authority: RCW 71.24.035 (5)(c), 71.24.037, 05-17-156, § 388-865-0150, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 71.05.560, 71.24.035, 71.34.800, and 2003 1st sp.s. c 25, 03-24-030, § 388-865-0150, filed 11/24/03, effective 12/25/03. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335, 01-12-047, § 388-865-0150, filed 5/31/01, effective 7/1/01.]

### **WAC 388-865-0230 Community support services.**

The regional support network must develop and coordinate age and culturally competent community support services that are consistent with chapters 71.24, 71.05, and 71.34 RCW:

- (1) Provide the following services directly, or contract with sufficient numbers and variety of licensed and/or certified service providers to ensure that persons eligible for

regional support network services have access to at least the following services:

- (a) Emergency crisis intervention services;
  - (b) Case management services;
  - (c) Psychiatric treatment including medication supervision;
  - (d) Counseling and psychotherapy services;
  - (e) Day treatment services as defined in RCW 71.24.300(5) and 71.24.035(7);
  - (f) Consumer employment services as defined in RCW 71.24.035 (5)(e); and
  - (g) Peer support services.
- (2) Conduct prescreening determinations for providing community support services for persons with mental illness who are being considered for placement in nursing homes (RCW 71.24.025(7) and 71.24.025(9)); and
- (3) Complete screening for persons with mental illness who are being considered for admission to residential services funded by the regional support network (RCW 71.24.025 and 71.24.025(9)).

[Statutory Authority: RCW 71.24.035 (5)(c), 71.24.037. 05-17-156, § 388-865-0230, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0230, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0335 Consumer enrollment.** (1) DSHS enrolls a Medicaid recipient in a mental health prepaid inpatient health plan when the person resides in the contracted service area of the prepaid inpatient health plan. The assigned prepaid inpatient health plan is responsible to provide outpatient medically necessary state Medicaid plan approved services to Medicaid service recipients in the contracted service area and to assure inpatient medically necessary state Medicaid plan approved services are received;

(2) An enrolled Medicaid service recipient who requests or receives medically necessary nonemergency community mental health rehabilitation services may request and receive such service from the assigned mental health prepaid inpatient health plan through authorized providers only;

(3) An enrolled Medicaid service recipient is automatically transferred from the assigned prepaid inpatient health plan when the recipient moves from the contracted service area of one mental health prepaid inpatient health plan to the contracted service area of another;

(4) Services to Medicaid recipients may be provided through alternative means if currently contracted authorized providers are not able to provide those services when:

(a) The services are state Medicaid plan approved services and are medically necessary for the Medicaid service recipient; and

(b) Services are or should be available to other Medicaid service recipients in the local mental health prepaid inpatient health plan; and

(c) The Medicaid service recipient has made reasonable attempts to utilize services through authorized providers; or

(d) The Medicaid service recipient has received a choice of providers and has made an informed decision to request medically necessary services through a provider outside the prepaid inpatient health plan provider network that has cultural or linguistic expertise or both needed to meet medical

necessity that are not sufficient within the provider network; or

(e) The Medicaid service recipient has utilized the prepaid inpatient health plan grievance or appeal process and the state administrative hearing process, and a decision has been made in favor of the Medicaid service recipient that Medicaid plan approved services continue to be medically necessary.

[Statutory Authority: RCW 71.24.035. 05-17-154, § 388-865-0335, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0335, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0400 Community support service providers.** The mental health division licenses and certifies community support service providers. To gain and maintain licensure or certification, a provider must meet applicable local, state and federal statutes and regulations as well as the requirements of WAC 388-865-400 [388-865-0400] through 388-865-450 [388-865-0450] as applicable to services offered. The license or certificate lists service components the provider is authorized to provide to publicly funded consumers and must be prominently posted in the provider reception area. In addition, the provider must meet minimum standards of the specific service components for which licensure is being sought:

- (1) Emergency crisis intervention services;
- (2) Case management services;
- (3) Psychiatric treatment, including medication supervision;
- (4) Counseling and psychotherapy services;
- (5) Day treatment services;
- (6) Consumer employment services; and/or
- (7) Peer support services.

[Statutory Authority: RCW 71.24.035 (5)(c), 71.24.037. 05-17-156, § 388-865-0400, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0400, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0420 Intake evaluation.** The community support service provider must complete an intake evaluation in collaboration with the consumer within fourteen days of admission to service. If seeking this information presents a barrier to service, the item may be left incomplete provided that the reasons are documented in the clinical record. The following must be documented in the consumer's intake evaluation:

- (1) A consent for treatment or copy of detention or involuntary treatment order;
- (2) Consumer strengths, needs and desired outcomes in their own words. At the consumer's request also include the input of people who provide active support to the consumer;
- (3) The consumer's age, culture/cultural history, and disability;
- (4) History of substance use and abuse or other co-occurring disorders;
- (5) Medical and mental health services history and a list of medications used;
- (6) Documentation that consumers receiving court ordered treatment or treatment ordered by the department of corrections (DOC) have been asked if they are under supervi-

sion by the department of corrections. The consumer is required to disclose this information.

(7) For children:

- (a) Developmental history; and
- (b) Parent's goals and desired outcomes.

(8) Sufficient information to justify the diagnosis;

(9) Review of the intake evaluation by a mental health professional.

[Statutory Authority: RCW 71.05.445 and 71.05.390 as amended by 2004 c 166, 05-14-082, § 388-865-0420, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0420, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0430 Clinical record.** The community support service provider must maintain a clinical record for each consumer and safeguard the record against loss, defacement, tampering, or use by unauthorized persons. The clinical record must contain:

- (1) An intake evaluation;
- (2) Evidence that the consumer rights statement was provided to the consumer;
- (3) A copy of any advance directives, powers of attorney or letters of guardianship provided by the consumer;
- (4) The crisis treatment plan when appropriate;
- (5) The individualized service plan and all changes in the plan;
- (6) Documentation that services are provided by or under the clinical supervision of a mental health professional;
- (7) Documentation that services are provided by, or under the clinical supervision, or the clinical consultation of a mental health specialist. Consultation must occur within thirty days of admission and periodically thereafter as specified by the mental health specialist;
- (8) Periodic documentation of the course of treatment and objective progress toward established goals for rehabilitation, recovery and reintegration into the mainstream of social, employment and educational choices;
- (9) A notation of extraordinary events affecting the consumer;
- (10) Documentation of mandatory reporting of abuse, neglect, or exploitation of consumers consistent with chapters 26.44 and 74.34 RCW;
- (11) Documentation that the department of corrections was notified by the provider when a consumer on an less restrictive alternative or department of corrections order mental health treatment informs them that they are under supervision by department of corrections. Notification can be either written or oral. If oral notification, it must be confirmed by a written notice, including e-mail and fax. The disclosure to department of corrections does not require the person's consent;
- (12) If the consumer has been given relief by the committing court it must be confirmed in writing;
- (13) When the mental health provider becomes aware of a violation that relates to public safety of court ordered treatment of a consumer who is both in a less restrictive alternative and is being supervised by the department of corrections, documentation that an evaluation by a county designated mental health professional was requested;

(14) Documentation of informed consent to treatment and medications by the consumer or legally responsible other;

(15) Documentation of confidential information that has been released without the consent of the consumer including, but not limited to provisions in RCW 70.02.050, 71.05.390 and 71.05.630.

[Statutory Authority: RCW 71.05.445 and 71.05.390 as amended by 2004 c 166, 05-14-082, § 388-865-0430, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0430, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0453 Peer support services.** (1) Peer support services are a wide range of scheduled activities to assist consumers in exercising control over their own lives and recovery process (e.g., promoting socialization, self advocacy, developing natural supports and maintenance of community living skills). Peer support services may include but are not limited to self-help support groups, telephone support lines, drop-in centers, and sharing of the peer counselor's own life experiences. Services must be limited to four hours per day per consumer.

(2) The community support service provider that is licensed to provide peer support services must assure that all general minimum standards for community support services are met.

(3) Services must be provided by a peer counselor who has been certified consistent with WAC 388-865-0107 and who discloses him/herself to be a consumer of mental health services.

(4) Services must be documented in the clinical record at least monthly, including objective progress toward goals established in the individual service plan.

[Statutory Authority: RCW 71.24.035 (5)(c), 71.24.037. 05-17-156, § 388-865-0453, filed 8/22/05, effective 9/22/05.]

**WAC 388-865-0610 Definitions.** Relevant records and reports includes written documents obtained from other agencies or sources, often referred to as third-party documents, as well as documents produced by the agency receiving the request. Relevant records and reports do not include the documents restricted by either federal law or federal regulation related to treatment for alcoholism or drug dependency or the Health Insurance Portability and Accountability Act or state law related to sexually transmitted diseases, as outlined in RCW 71.05.445 and 71.34.225.

(1) **"Relevant records and reports"** means:

(a) Records and reports of inpatient treatment:

(i) Inpatient psychosocial assessment - Any initial, interval, or interim assessment usually completed by a person with a master's degree in social work (or equivalent) or equivalent document as established by the holders of the records and reports;

(ii) Inpatient intake assessment - The first assessment completed for an admission, usually completed by a psychiatrist or other physician or equivalent document as established by the holders of the records and reports;

(iii) Inpatient psychiatric assessment - Any initial, interim, or interval assessment usually completed by a psychiatrist (or professional determined to be equivalent) or

equivalent document as established by the holders of the records and reports;

(iv) Inpatient discharge/release summary - Summary of a hospital stay usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;

(v) Inpatient treatment plan - A document designed to guide multidisciplinary inpatient treatment or equivalent document as established by the holders of the records and reports;

(vi) Inpatient discharge and aftercare plan data base - A document designed to establish a plan of treatment and support following discharge from the inpatient setting or equivalent document as established by the holders of the records and reports.

(vii) Forensic discharge review - A report completed by a state hospital for individuals admitted for evaluation or treatment who have transferred from a correctional facility or is or has been under the supervision of the department of corrections.

(b) Records and reports of outpatient treatment:

(i) Outpatient intake evaluation - Any initial or intake evaluation or summary done by any mental health practitioner or case manager the purpose of which is to provide an initial clinical assessment in order to guide outpatient service delivery or equivalent document as established by the holders of the records and reports;

(ii) Outpatient periodic review - Any periodic update, summary, or review of treatment done by any mental health practitioner or case manager. This includes, but is not limited to: Documents indicating diagnostic change or update; annual or periodic psychiatric assessment, evaluation, update, summary, or review; annual or periodic treatment summary; concurrent review; individual service plan as required by WAC 388-865-0425 through 388-865-0430, or equivalent document as established by the holders of the records and reports;

(iii) Outpatient crisis plan - A document designed to guide intervention during a mental health crisis or decompensation or equivalent document as established by the holders of the records and reports;

(iv) Outpatient discharge or release summary - Summary of outpatient treatment completed by a mental health professional or case manager at the time of termination of outpatient services or equivalent document as established by the holders of the records and reports;

(v) Outpatient treatment plan - A document designed to guide multidisciplinary outpatient treatment and support or equivalent document as established by the holders of the records and reports.

(c) Records and reports regarding providers and medications:

(i) Current medications and adverse reactions - A list of all known current medications prescribed by the licensed practitioner to the individual and a list of any known adverse reactions or allergies to medications or to environmental agents;

(ii) Name, address and telephone number of the case manager or primary clinician.

(d) Records and reports of other relevant treatment and evaluation:

(i) Psychological evaluation - A formal report, assessment, or evaluation based on psychological tests conducted by a psychologist;

(ii) Neuropsychological evaluation - A formal neuropsychological report, assessment, or evaluation based on neuropsychological tests conducted by a psychologist;

(iii) Educational assessment - A formal report, assessment, or evaluation of educational needs or equivalent document as established by the holders of the records and reports;

(iv) Functional assessment - A formal report, assessment, or evaluation of degree of functional independence. This may include but is not limited to: Occupational therapy evaluations, rehabilitative services data base activities assessment, residential level of care screening, problem severity scale, instruments used for functional assessment or equivalent document as established by the holders of the records and reports;

(v) Forensic evaluation - An evaluation or report conducted pursuant to chapter 10.77 RCW;

(vi) Offender/violence alert - A any documents pertaining to statutory obligations regarding dangerous or criminal behavior or to dangerous or criminal propensities. This includes, but is not limited to, formal documents specifically designed to track the need to provide or past provision of: Duty to warn, duty to report child/elder abuse, victim/witness notification, violent offender notification, and sexual/kidnaping offender notification per RCW 4.24.550, 10.77.205, 13.40.215, 13.40.217, 26.44.330, 71.05.120, 71.05.330, 71.05.340, 71.05.425, 71.09.140, and 74.34.035;

(vii) Risk assessment - Any tests or formal evaluations including department of corrections risk assessments administered or conducted as part of a formal violence or criminal risk assessment process that is not specifically addressed in any psychological evaluation or neuropsychological evaluation.

(e) Records and reports of legal status - Legal documents are documents filed with the court or produced by the court indicating current legal status or legal obligations including, but not limited to:

(i) Legal documents pertaining to chapter 71.05 RCW;

(ii) Legal documents pertaining to chapter 71.34 RCW;

(iii) Legal documents containing court findings pertaining to chapter 10.77 RCW;

(iv) Legal documents regarding guardianship of the person;

(v) Legal documents regarding durable power of attorney;

(vi) Legal or official documents regarding a protective payee;

(vii) Mental health advance directive.

(2) **"Relevant information"** means descriptions of a consumer's participation in, and response to, mental health treatment and services not available in a relevant record or report, including all statutorily mandated reporting or duty to warn notifications as identified in WAC 388-865-610 (1)(d) (vi), Offender/Violence alert, and all requests for evaluations for involuntary civil commitments under chapter 71.05 RCW. The information may be provided in verbal or written form at the discretion of the mental health service provider.

[Statutory Authority: RCW 71.05.445 and 71.05.390 as amended by 2004 c 166, 05-14-082, § 388-865-0610, filed 6/30/05, effective 7/31/05. Statutory



Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.-020, and 43.20B.335. 01-12-047, § 388-865-0610, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0620 Scope.** Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period prior to the date of the request; or

(2) For all other purposes including risk assessments release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available.

[Statutory Authority: RCW 71.05.445 and 71.05.390 as amended by 2004 c 166. 05-14-082, § 388-865-0620, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0620, filed 5/31/01, effective 7/1/01.]

**WAC 388-865-0630 Time frame.** The mental health service provider shall provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - within seven calendar days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - within thirty calendar days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervision or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes e-mail or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

(a) Information that can be released is limited to:

(i) A statement as to whether the offender is or is not being treated by the mental health services provider; and

(ii) Address or information about the location or whereabouts of the offender.

[Statutory Authority: RCW 71.05.445 and 71.05.390 as amended by 2004 c 166. 05-14-082, § 388-865-0630, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0630, filed 5/31/01, effective 7/1/01.]

## Title 390 WAC

# PUBLIC DISCLOSURE COMMISSION

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### Chapter 390-16 WAC

## FORMS FOR CAMPAIGN FINANCING REPORTING—CONTRIBUTIONS

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Limitations on contributions.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

#### 390-16-311

Automatically affiliated entities maintaining separate contribution limits. [Statutory Authority: RCW 42.17.390. 94-11-017, § 390-16-311, filed 5/5/94, effective 6/5/94.] Repealed by 05-06-070, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 42.17.370.

**WAC 390-16-011 Forms—Registration statement for political committees.** The official form for providing the statement of organization by political committees for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1pc," revised 2/05. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.



## Political Committee Registration

**C1<sub>PC</sub>**  
(2/05)

Committee Name (Show entire official name.)		Acronym:	
Mailing Address		Telephone: (    )	
City	County	Zip + 4	Fax: (    )
NEW OR AMENDED REGISTRATION? <input type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.			COMMITTEE STATUS <input type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input type="checkbox"/> _____ election year only. Date of general or special election: _____ (Year)

1. What is the purpose or description of the committee?

☐ **Bona Fide Political Party Committee** - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list or specify here the names of the candidates you support

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☐ **Ballot Committee** - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure:

	Ballot Number _____	FOR <input type="checkbox"/>	AGAINST <input type="checkbox"/>
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☐ **Other Political Committee** - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:

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**For single election-year only committees (not continuing committees):** Is the committee supporting or opposing  
 (a) one or more candidates? ☐ Yes ☐ No If yes, attach a list of each candidate's name, office sought and political party affiliation.  
 (b) the entire ticket of a political party? ☐ Yes ☐ No If yes, identify the party.

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2. Related or affiliated committees. List name, address and relationship. ☐ Continued on attached sheet

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3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)

**If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.**

<input type="checkbox"/> <b>MINI REPORTING</b> Mini Reporting is selected. No more than \$3,500 will be raised or spent <u>and</u> no more than \$300 in the aggregate will be accepted from any one contributor.	<input type="checkbox"/> <b>FULL REPORTING</b> Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.
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4. Campaign Manager's or Media Contact's Name and Address	Telephone Number: (    )
5. Treasurer's Name and Address (List deputy treasurers on attached sheet.) <span style="float: right;"><input type="checkbox"/> Continued on attached sheet</span>	Daytime Telephone Number: (    )

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6. Committee Officers. List name, title, and address. Continue on attached sheet if necessary. See reverse for definition of "officer." ☐ Continued on attached sheet

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7. Campaign Bank or Depository	Branch	City
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8. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday – two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address.

**Street Address, Room Number, City** **Hours** [Two consecutive hours; see 8(a)]

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): (    )

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9. <b>Eligibility to Give to State Office Candidates:</b> During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State. <input type="checkbox"/> A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).	10. <b>Signature and Certification.</b> I certify that this statement is true, complete and correct to the best of my knowledge.  <div style="display: flex; justify-content: space-between;"> <span>Committee Treasurer's Signature</span> <span>Date</span> </div>
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SEE INSTRUCTIONS ON REVERSE




Please consult PDC instruction manuals when completing this report.  
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

<b>Who Must File</b>	Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.
<b>When To File</b>	<p><u>Within 2 weeks of organizing a committee</u> or first expecting to receive contributions or make expenditures, whichever occurs first. <b>(Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)</b></p> <p>File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. <u>For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.</u></p> <p>Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.</p>
<b>Where To File</b>	Send the <b>original to PDC</b> at the above address. Send a <b>copy to County Auditor</b> (county elections office) of the county in which the committee headquarters is located. If there is no headquarters, send to the County Auditor of the county in which the treasurer resides. Keep a copy as part of the committee's records.
<b>“Officer” of a Political Committee – Definition</b>	<p>Officer of a political committee includes the following persons:</p> <ul style="list-style-type: none"> <li>• the treasurer,</li> <li>• any person designated as an officer on the C-1pc registration statement, and</li> <li>• any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)</li> </ul>

**For Instruction Manuals and Reporting Forms or look under the “Filer Assistance”  
menu category on PDC’s Web Site: [www.pdc.wa.gov](http://www.pdc.wa.gov)**

[Statutory Authority: RCW 42.17.370. 05-06-070, § 390-16-011, filed 3/1/05, effective 4/1/05; 01-10-049, § 390-16-011, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 42.17.370(1). 00-22-050, § 390-16-011, filed 10/27/00, effective 11/27/00; 99-22-083, § 390-16-011, filed 11/2/99, effective 12/3/99. Statutory Authority: RCW 42.17.390. 94-05-011, § 390-16-011, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370. 93-15-004, § 390-16-011, filed 7/7/93, effective 8/7/93; 92-18-002, § 390-16-011, filed 8/20/92, effective 9/20/92; 91-22-033, § 390-16-011, filed 10/30/91, effective 11/30/91; 89-20-068, § 390-16-011, filed 10/4/89, effective 11/4/89. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-16-011, filed 2/5/86; 82-11-026 (Order 82-03), § 390-16-011, filed 5/10/82; 82-02-007 (Order 81-04), § 390-16-011, filed 12/28/81; Order 91, § 390-16-011, filed 7/22/77; Order 62, § 390-16-011, filed 8/26/75; Order 60, § 390-16-011, filed 7/16/75.]

**WAC 390-16-012 Forms—Registration statement for candidates.** The official form for providing the statement of organization by candidates and candidate's committees, for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1," revised 2/05. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington, 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

 <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> <b>PUBLIC DISCLOSURE COMMISSION</b>  711 CAPITOL WAY RM 206  PO BOX 40908  OLYMPIA WA 98504-0908  (360) 763-1111  Toll Free 1-877-601-2828 </div>		<h2 style="margin: 0;">Candidate Registration</h2>		C1	
Candidate's Name (Give candidate's full name.)			Telephone Numbers (     )		
Candidate's Committee Name (Do not abbreviate.)			(     )		
Mailing Address			Fax Number (     )		
City	County	Zip + 4	E-Mail Address		
1. What office are you running for?		Legislative District, County or City	Position No.	Do you now hold this office? Yes <input type="checkbox"/> No <input type="checkbox"/>	
2. Political party (if partisan office)			3. Date of general or special election		
4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.  <input type="checkbox"/> <b>Option I MINI REPORTING:</b> In addition to my filing fee of \$ _____, I will raise and spend no more than \$3,500, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$300 in the aggregate from any contributor except myself.  <input type="checkbox"/> <b>Option II FULL REPORTING:</b> I will use the Full Reporting system. I will file the frequent, detailed campaign reports required by law.					
5. Treasurer's Name and Address. Candidate may be treasurer. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet				Daytime Telephone Number (     )	
6. Committee Officers. List name, title and address. Continue on attached sheet if necessary. See reverse for definition of "officer."					<input type="checkbox"/> Continued on attached sheet
7. Campaign Bank or Depository		Branch	City		
8. Related or Affiliated Political Committees. List name, address and relationship.					
<div style="text-align: right;"><input type="checkbox"/> Continued on attached sheet</div> 9. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday – two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays, by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address.  <div style="display: flex; justify-content: space-between;"> <span>Street Address, Room Number, City</span> <span>Hours [Two consecutive hours; see 9(a)]</span> </div>					
In order to make an appointment, contact the campaign at (telephone, fax, e-mail): (     )					
10. <b>CERTIFICATION:</b> I certify that this report is true, complete and correct to the best of my knowledge. <div style="display: flex; justify-content: space-between;"> <span>Candidate's Signature</span> <span>Date</span> </div>					

SEE INSTRUCTIONS ON REVERSE



Please consult PDC instruction manuals when completing this report.  
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

<b>Who Must File</b>	<p>Candidates who seek</p> <ul style="list-style-type: none"> <li>• state office (legislative or statewide executive),</li> <li>• a state supreme court or state court of appeals position,</li> <li>• local office in jurisdictions having 5,000 or more registered voters as of the last general election or in jurisdictions covering an entire county.</li> </ul>
<b>When To File</b>	<p><u>Within 2 weeks of becoming a candidate.</u> A person becomes a candidate for PDC purposes when he or she <b>first</b> does any of the following:</p> <ul style="list-style-type: none"> <li>• receives contributions, makes expenditures, or reserves space or facilities with intent to promote his or her candidacy;</li> <li>• purchases commercial advertising space or broadcast time to promote his or her candidacy;</li> <li>• authorizes another person to take one of these above actions on his or her behalf;</li> <li>• announces publicly that he or she is seeking office; or</li> <li>• files a declaration of candidacy with the appropriate elections official.</li> </ul> <p>File an amended registration within 10 days of a material change to information provided on previously filed C-1. Reports are considered filed as of the postmark date or date hand-delivered to PDC.</p>
<b>Where To File</b>	<p>Send the <b>original to PDC</b> at the above address. Send a <b>copy to County Auditor</b> (county elections office) of the county in which the candidate resides. Candidates for city offices are advised to contact their City Clerk to learn if local filing is required by local ordinance. Keep a copy as part of the campaign's records.</p>
<b>“Officer” of a Candidate’s Committee – Definition</b>	<p>Officer of a candidate’s authorized committee or officer of a candidate’s committee includes the following persons:</p> <ul style="list-style-type: none"> <li>• the treasurer,</li> <li>• any person designated as an officer on the C-1 registration statement, and</li> <li>• any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)</li> </ul>

**For Instruction Manuals and Reporting Forms look under the “Filer Assistance”  
menu category on PDC’s Web Site: [www.pdc.wa.gov](http://www.pdc.wa.gov)**

[Statutory Authority: RCW 42.17.370, 05-06-070, § 390-16-012, filed 3/1/05, effective 4/1/05; 01-10-054, § 390-16-012, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 42.17.370(1), 00-22-051, § 390-16-012, filed 10/27/00, effective 11/27/00; 99-22-084, § 390-16-012, filed 11/2/99, effective 12/3/99. Statutory Authority: RCW 42.17.390, 94-05-011, § 390-16-012, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370, 93-15-004, § 390-16-012, filed 7/7/93, effective 8/7/93; 92-18-002, § 390-16-012, filed 8/20/92, effective 9/20/92; 89-20-068, § 390-16-012, filed 10/4/89, effective 11/4/89.]

**WAC 390-16-105 Mini campaign reporting—Eligibility.** (1) A candidate or candidate's authorized committee, as those terms are defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.065 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed three thousand five hundred dollars and no contribution or contributions from any person other than the candidate within such aggregate exceed three hundred dollars. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.065 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when neither aggregate contributions nor aggregate expenditures exceed three thousand five hundred dollars and no contribution or contributions from any person exceed three hundred dollars.

(3) A continuing political committee, as that term is defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.065 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when neither aggregate contributions nor aggregate expenditures during a calendar year exceed three thousand five hundred dollars and no contribution or contributions from any person exceed three hundred dollars.

(4) Candidates and political committees are required to comply with all applicable provisions of chapter 42.17 RCW including, but not limited to, false political advertising, sponsor identification and public inspection of campaign books of account unless specifically exempted under subsections (1) through (3) of this section.

[Statutory Authority: RCW 42.17.370. 05-11-001, § 390-16-105, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 42.17.370(1). 02-03-018, § 390-16-105, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370. 01-10-050, § 390-16-105, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-16-105, filed 2/5/86; Order 91, § 390-16-105, filed 7/22/77; Order 62, § 390-16-105, filed 8/26/75.]

**WAC 390-16-125 Mini campaign reporting—Exceeding limitations.** (1) A candidate or political committee shall apply in writing to the commission for authorization to change reporting options before the limitations specified in WAC 390-16-105 are exceeded. A complete application shall include all of the following documents:

(a) An amended registration statement (Form C-1 for candidates, Form C-1pc for political committees) selecting the full reporting option as provided in RCW 42.17.065 - 42.17.090;

(b) PDC forms C-3 and C-4 with relevant schedules and attachments disclosing all contributions and expenditures to date reportable under RCW 42.17.090 for the election campaign, or in the case of continuing political committees, for the calendar year; and

(c)(i) If the applicant is a candidate, a statement affirming that all candidates registered with the commission for the office being sought have been notified personally in writing

of the application, and the manner and date of such notification;

(ii) If the applicant is the treasurer of a political committee supporting or opposing a ballot proposition, a statement affirming that all treasurers of all political committees registered with the commission as supporting or opposing the proposition have been notified personally in writing of the application, and the manner and date of such notification; or

(iii) If the applicant is the treasurer of a county or legislative district party committee, a statement affirming that the treasurer of that party committee's counterpart in any other major political party has been notified personally in writing of the application, and the manner and date of such notification.

(2) An application that is submitted without the required documents described in subsection (1) of this section is incomplete and will not be processed or approved. If the applicant provides the missing documents, the application will be determined to be complete on the date the documents are postmarked or delivered to the commission.

(3) If a complete application is postmarked or delivered to the commission on or before thirty business days prior to the date of the election, the application shall be approved by the executive director.

(4) If a complete application is postmarked or delivered to the commission on or after twenty-nine business days prior to the election, the application shall be approved by the executive director only if one or more of the following factors are present:

(a) The commission staff did not send to the applicant's campaign in a timely and proper manner, either electronically or by other mail delivery service, a notice that the thirtieth business day deadline for unrestricted changes in reporting options is approaching. To be timely and proper, this notice must be sent at least forty business days before the election to the campaign's electronic mail address or postal service mailing address specified on the registration statement;

(b) The applicant is a candidate and, within thirty business days of the election, a write-in opponent has filed for office in accordance with chapter 29A.24 RCW;

(c) Within thirty business days of the election, an independent expenditure as defined in RCW 42.17.020 is made in support of the applicant's opponent or in opposition to the applicant; or

(d) When a candidate or political committee on one side of an election campaign or proposition has been approved to change reporting options under this section, each opponent of that candidate or political committee is approved to change options as of the date that opponent postmarks or delivers a complete application to the commission.

(5) Exceeding the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 without complying with the provisions of this section shall constitute one or more violations of chapter 42.17 RCW or 390-17 WAC.

[Statutory Authority: RCW 42.17.370. 05-11-001, § 390-16-125, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 42.17.370 and 42.17.690. 01-22-051, § 390-16-125, filed 10/31/01, effective 1/1/02. Statutory Authority: RCW 42.17.370. 92-18-002, § 390-16-125, filed 8/20/92, effective 9/20/92; 92-05-079, § 390-16-125, filed 2/18/92, effective 3/20/92; 90-16-083, § 390-16-125, filed 7/31/90, effective 8/31/90; 89-20-068, § 390-16-125, filed 10/4/89, effective 11/4/89. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-16-125, filed 2/5/86; Order

91, § 390-16-125, filed 7/22/77; Order 67, § 390-16-125, filed 1/16/76; Order 62, § 390-16-125, filed 8/26/75.]

**WAC 390-16-310 Limitations on contributions.** The limitations on contributions as provided in RCW 42.17.105 (8) and RCW 42.17.640 shall be as follows:

(1)(a) The limitation on contributions in RCW 42.17.640 shall not apply to a "candidate" as that term is defined in RCW 42.17.020(8) when the candidate is contributing to his or her own campaign using his or her own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW 42.17.640 shall apply to contributions to the candidate from the candidate's spouse or other immediate family members.

(2) The limitations on contributions shall apply separately to the contributions made by each spouse.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions and the contribution is properly attributed to the emancipated minor child if;

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children shall be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to the parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship shall be aggregated for purposes of determining the limitations of contributions under RCW 42.17.105(8) and 42.17.640.

(5) The limitations on contributions shall apply separately to the contributions made by a partnership from the contributions made by an individual partner except that;

Contributions made from or charged against the capital account of an individual partner shall be aggregated with the partner's individual contributions for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.

(6) The limitations on contributions shall apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local units) pursuant to the standards set forth in WAC 390-16-309.

[Statutory Authority: RCW 42.17.370. 05-06-070, § 390-16-310, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 42.17.370(1). 96-05-001, § 390-16-310, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.390. 94-11-016, § 390-16-310, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 42.17.370. 93-16-064, § 390-16-310, filed 7/30/93, effective 8/30/93; 92-05-079, § 390-16-310, filed 2/18/92, effective 3/20/92; 90-20-088, § 390-16-310, filed 9/28/90, effective 10/29/90.]

## Chapter 390-17 WAC CONTRIBUTION LIMITATIONS

### WAC

390-17-310

Doing business in Washington.

**WAC 390-17-310 Doing business in Washington.** A corporation or business entity is "doing business in Washington state" for purposes of RCW 42.17.640(11) if it conducts continuous or substantial activities in Washington state of such character as to give rise to a legal obligation.

In determining whether a corporation or business entity is doing business in Washington state, the commission will take into consideration the following nonexclusive list of indicators:

- Purposefully availing itself of the privilege of conducting business in the state by invoking both benefits and protections of state law.
- Appointing an agent for service of process in Washington state.
- Registering as a corporation in Washington.
- Operating business locations in Washington.
- Hiring employees to work in Washington.
- Purchasing or selling goods or services in Washington.
- Operating an interactive internet web site for the purpose of conducting business.

[Statutory Authority: RCW 42.17.370. 05-04-039, § 390-17-310, filed 1/27/05, effective 2/27/05. Statutory Authority: RCW 42.17.370(1). 96-05-001, § 390-17-310, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.370. 93-16-064, § 390-17-310, filed 7/30/93, effective 8/30/93.]

## Chapter 390-19 WAC ELECTRONIC FILING

### WAC

390-19-030

Electronic filing—Reporting threshold.

**WAC 390-19-030 Electronic filing—Reporting threshold.** (1) The "electronic reporting threshold" that requires electronic filing of all contribution and expenditure reports is met when a candidate or political committee has expended \$10,000 or more in the preceding calendar year or expects to expend \$10,000 or more in the current calendar year.

(2) It is presumed that a filer "expects to expend" \$10,000 or more when any one of the following first occurs:

- (a) A filer spends at least \$10,000;
- (b) A filer is a candidate for the same office last sought, the filer's election is in the current calendar year, and his or her campaign expenditures in the previous election for the same office were \$10,000 or more;
- (c) A filer's expenditures meet or exceed \$2,500 on or before March 31 of the current calendar year;
- (d) A filer's expenditures meet or exceed \$5,000 on or before June 30 of the current calendar year;
- (e) A filer's expenditures meet or exceed \$7,500 on or before September 30 of the current calendar year; or

(f) A filer otherwise projects that \$10,000 or more will be spent during the current calendar year.

(3) The following expenditures or transactions are excluded from the electronic reporting threshold calculation:

(a) Expenditures made to pay outstanding debts carried forward from a previous election;

(b) Surplus funds disposed of in accordance with RCW 42.17.095; and

(c) The value of in-kind contributions pledged or received within eight days of a special or general election.

(4) Candidate committees or political committees supporting or opposing ballot propositions that meet, exceed or expect to meet or exceed the electronic reporting threshold shall report electronically for the duration of the campaign.

(5) A report that is filed with the commission electronically need not also be filed with the county auditor or elections officer pursuant to RCW 42.17.080.

[Statutory Authority: RCW 42.17.370. 05-11-001, § 390-19-030, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 42.17.370(1). 04-01-130, § 390-19-030, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 42.17.370. 01-22-052, § 390-19-030, filed 10/31/01, effective 1/1/02.]

### **Chapter 390-20 WAC**


#### **FORMS FOR LOBBYING REPORTS, ELECTED OFFICIALS AND LEGISLATORS**

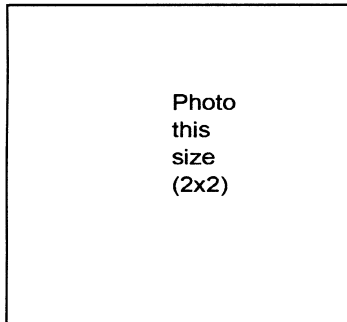
##### **WAC**

390-20-0101	Forms for lobbyist registration.
390-20-110	Forms for lobbyist employers report.
390-20-130	Forms for statement of employment of legislators, state officers, and state employees.



**WAC 390-20-0101 Forms for lobbyist registration.** The official form for lobbyist registration as required by RCW 42.17.150 is designated "L-1," revised 2/05. Copies of this form are available at the commission office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any paper attachments shall be on 8-1/2" x 11" white paper.

 <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> <b>PUBLIC DISCLOSURE COMMISSION</b>  <b>711 CAPITOL WAY RM 206</b>  <b>PO BOX 40908</b>  <b>OLYMPIA WA 98504-0908</b>  <b>(360) 753-1111</b> </div> <div style="text-align: center; margin-top: 20px;"> <h2 style="margin: 0;">LOBBYIST REGISTRATION</h2> </div>		<div style="border: 1px solid black; padding: 5px; font-size: 2em; font-weight: bold; margin: 10px auto; width: 40px;">L1</div> <div style="border: 1px solid black; padding: 5px; font-size: 0.8em; margin-top: 5px;">THIS SPACE FOR OFFICE USE</div>																																					
1. Lobbyist Name																																							
Permanent Business Address	Business Telephone Numbers																																						
City State Zip	Permanent (     ) Temporary (     ) Cell Phone (     ) or Pager																																						
2. Temporary Thurston County address during legislative session	E-Mail Address																																						
3. Employer's name and address (person or group for which you lobby)	Employer's occupation, business or description of purpose of organization																																						
4. Name and address of person having custody of accounts, receipts, books or other documents which substantiate lobbyist reports.	E-Mail Address																																						
5. What is your pay (compensation) for lobbying? \$ _____ per _____ (hour, day, month, year) Other: Explain:	Description of employment (check one or more boxes) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Full time employee  <input type="checkbox"/> Part time or temporary employee  <input type="checkbox"/> Contractor, retainer or similar agreement  <input type="checkbox"/> Unsalaries officer or member of group         </div> <div> <input type="checkbox"/> Sole duty is lobbying  <input type="checkbox"/> Lobbying is only a part of other duties         </div> </div>																																						
6. Are you reimbursed for lobbying expenses? Explain which expenses. <input type="checkbox"/> Yes: \$ _____ per _____ <input type="checkbox"/> Yes: I am reimbursed for expenses. <input type="checkbox"/> No: I am not reimbursed for expenses.	Does employer pay any of your lobbying expenses directly? If yes, explain which ones.																																						
7. How long do you expect to lobby for this organization? <input type="checkbox"/> Permanent lobbyist <input type="checkbox"/> Only during legislative session <input type="checkbox"/> Other, Explain:																																							
8. Is your employer a business or trade association or similar organization which lobbies on behalf of its members? If "yes," attach a list showing the name and address of each member who has paid the association fees, dues or other payments over \$500 during either of the past two years or is expected to pay over \$500 this year. <input type="checkbox"/> No <input type="checkbox"/> Yes. However, no member has paid, pays, or is expected to pay over \$500. <input type="checkbox"/> Yes. The list is attached																																							
9. Does your employer have a connected, related or closely affiliated political action committee which will provide funds for you to make political contributions including purchase tickets to fund raising events? If so, list the name of that political action committee. <input type="checkbox"/> No <input type="checkbox"/> Yes. Name of the committee is:																																							
11. Areas of interest. Lobbying is most frequent before legislative committee members or state agencies concerned with following subjects:  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <table style="width: 100%; border: none;"> <tr><th style="text-align: left;">CODE</th><th style="text-align: left;">SUBJECT</th></tr> <tr><td>01 <input type="checkbox"/></td><td>Agriculture</td></tr> <tr><td>02 <input type="checkbox"/></td><td>Business and consumer affairs</td></tr> <tr><td>03 <input type="checkbox"/></td><td>Constitutions and elections</td></tr> <tr><td>04 <input type="checkbox"/></td><td>Education</td></tr> <tr><td>05 <input type="checkbox"/></td><td>Energy and utilities</td></tr> <tr><td>06 <input type="checkbox"/></td><td>Environmental affairs - natural resources - parks</td></tr> <tr><td>07 <input type="checkbox"/></td><td>Financial institutions and insurance</td></tr> </table> </td><td style="width: 50%; vertical-align: top;"> <table style="width: 100%; border: none;"> <tr><th style="text-align: left;">CODE</th><th style="text-align: left;">SUBJECT</th></tr> <tr><td>08 <input type="checkbox"/></td><td>Fiscal</td></tr> <tr><td>09 <input type="checkbox"/></td><td>Higher education</td></tr> <tr><td>10 <input type="checkbox"/></td><td>Human services</td></tr> <tr><td>11 <input type="checkbox"/></td><td>Labor</td></tr> <tr><td>12 <input type="checkbox"/></td><td>Law and justice</td></tr> <tr><td>13 <input type="checkbox"/></td><td>Local government</td></tr> <tr><td>14 <input type="checkbox"/></td><td>State government</td></tr> <tr><td>15 <input type="checkbox"/></td><td>Transportation</td></tr> <tr><td>16 <input type="checkbox"/></td><td>Other - Specify:</td></tr> </table> </td></tr> </table>	<table style="width: 100%; border: none;"> <tr><th style="text-align: left;">CODE</th><th style="text-align: left;">SUBJECT</th></tr> <tr><td>01 <input type="checkbox"/></td><td>Agriculture</td></tr> <tr><td>02 <input type="checkbox"/></td><td>Business and consumer affairs</td></tr> <tr><td>03 <input type="checkbox"/></td><td>Constitutions and elections</td></tr> <tr><td>04 <input type="checkbox"/></td><td>Education</td></tr> <tr><td>05 <input type="checkbox"/></td><td>Energy and utilities</td></tr> <tr><td>06 <input type="checkbox"/></td><td>Environmental affairs - natural resources - parks</td></tr> <tr><td>07 <input type="checkbox"/></td><td>Financial institutions and insurance</td></tr> </table>	CODE	SUBJECT	01 <input type="checkbox"/>	Agriculture	02 <input type="checkbox"/>	Business and consumer affairs	03 <input type="checkbox"/>	Constitutions and elections	04 <input type="checkbox"/>	Education	05 <input type="checkbox"/>	Energy and utilities	06 <input type="checkbox"/>	Environmental affairs - natural resources - parks	07 <input type="checkbox"/>	Financial institutions and insurance	<table style="width: 100%; border: none;"> <tr><th style="text-align: left;">CODE</th><th style="text-align: left;">SUBJECT</th></tr> <tr><td>08 <input type="checkbox"/></td><td>Fiscal</td></tr> <tr><td>09 <input type="checkbox"/></td><td>Higher education</td></tr> <tr><td>10 <input type="checkbox"/></td><td>Human services</td></tr> <tr><td>11 <input type="checkbox"/></td><td>Labor</td></tr> <tr><td>12 <input type="checkbox"/></td><td>Law and justice</td></tr> <tr><td>13 <input type="checkbox"/></td><td>Local government</td></tr> <tr><td>14 <input type="checkbox"/></td><td>State government</td></tr> <tr><td>15 <input type="checkbox"/></td><td>Transportation</td></tr> <tr><td>16 <input type="checkbox"/></td><td>Other - Specify:</td></tr> </table>	CODE	SUBJECT	08 <input type="checkbox"/>	Fiscal	09 <input type="checkbox"/>	Higher education	10 <input type="checkbox"/>	Human services	11 <input type="checkbox"/>	Labor	12 <input type="checkbox"/>	Law and justice	13 <input type="checkbox"/>	Local government	14 <input type="checkbox"/>	State government	15 <input type="checkbox"/>	Transportation	16 <input type="checkbox"/>	Other - Specify:	Remarks:
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<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <b>CERTIFICATION:</b> I hereby certify that the above is a true, complete and correct statement.         </div> <div style="width: 45%;"> <b>EMPLOYER'S AUTHORIZATION:</b> Confirming the employment authority to lobby described in this registration statement.         </div> </div>																																							
12. LOBBYIST'S SIGNATURE	EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE																																						
DATE	DATE																																						

**LOBBYIST IDENTIFICATION FORM****NAME:****BUSINESS ADDRESS:****PHONE:****OLYMPIA ADDRESS:****PHONE:****EMPLOYERS' NAMES:**

**YEAR FIRST EMPLOYED AS A LOBBYIST:**  
**BIOGRAPHY:**

**INSTRUCTIONS**

- **ATTACH THIS PAGE TO YOUR L-1 REGISTRATION.**
- **ATTACH 2" x 2" PASSPORT TYPE PHOTO. PHOTO SHOULD BE HEAD AND SHOULDERS, FULL FACE, AND TAKEN WITHIN LAST 12 MONTHS.**
- **PLEASE WRITE NAME, LIGHTLY IN PENCIL, ON BACK OF PHOTO BEFORE ATTACHING.**
- **PHOTOS WILL NOT BE RETURNED.**
- **PLEASE SEE INSTRUCTION BOOKLET FOR EXAMPLE OF BIOGRAPHY.**
- **LIST ALL EMPLOYERS ON THIS PAGE.**

PDC FORM L-1, PAGE 2 (Rev. 2/05)

[Statutory Authority: RCW 42.17.370. 05-06-070, § 390-20-0101, filed 3/1/05, effective 4/1/05; 04-02-028, § 390-20-0101, filed 12/31/03, effective 1/31/04. Statutory Authority: RCW 42.17.370(1). 00-22-060 and 00-24-041, § 390-20-0101, filed 10/27/00 and 11/29/00, effective 11/27/00 and 12/30/00. Statutory Authority: RCW 42.17.370. 91-09-021, § 390-20-0101, filed 4/10/91, effective 5/11/91. Statutory Authority: RCW 42.17.370(1). 87-05-001 (Order 87-01), § 390-20-0101, filed 2/5/87; 85-24-020 (Order 85-05), § 390-20-0101, filed 11/26/85; 82-21-020 (Order 82-07), § 390-20-0101, filed 10/12/82; 78-02-063 (Order 96), § 390-20-0101, filed 1/23/78.]

**WAC 390-20-110 Forms for lobbyist employers report.** The official form for statement by employers of registered lobbyists as required by RCW 42.17.180 is designated "L-3," revised 2/05. Copies of this form are available at the Commission Office 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington, 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

**PUBLIC DISCLOSURE COMMISSION**  
 **711 CAPITOL WAY RM 206**  
**PO BOX 40908**  
**OLYMPIA WA 98504-0908**  
**(360) 753-1111**  
**TOLL FREE 1-877-601-2828**

## Employer's Lobbying Expenses

**L3**

2/05

THIS SPACE FOR OFFICE USE

1. Employer's Name (Use complete company, association, union or entity name.)				
Attention (Identify person to whom inquiries about the information below should be directed; NOT the lobbyist.)				
Mailing Address			Telephone ( ) -	
City	State	Zip + 4	E-Mail Address	Year Report Covers

**THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY.** Include expenditures made and accrued during the previous calendar year for lobbying the Washington State Legislature and/or any state agency. Complete all sections. Use "none" or "0" when applicable.

2. Identify each of your lobbyists/lobbying firms below. In column 1, show the full amount of salary or fee each earned for lobbying. In column 2, show the full amount paid (plus obligated) for other lobbying related expenses that were made by or through the lobbyist and reported by the lobbyist on the monthly L-2 report (e.g., contributions to legislative candidates, reimbursement for entertainment expenses, etc.). Compute the subtotals across and down the columns; put the grand total of expenses incurred by or through lobbyists in the space designated.

Names of Registered Lobbyists (if payments were to lobbying firm, list firm name)	Col 1-Salary \$	Col 2-Other \$	Total Amount \$
Total From Attached Page			
Total Expenses By or Through Lobbyists			\$

☐ Information continued on attached pages

**DO NOT INCLUDE EXPENDITURES ALREADY ACCOUNTED FOR IN ITEM 2 ABOVE when completing Items 3 through 7 below.**

3. Other expenditures made by the employer for lobbying purposes. Show total expenditures made/accrued:
- to vendors on behalf of or in support of registered lobbyists (e.g., entertainment credit card purchases); \$
  - to or on behalf of expert witnesses or others retained to provide lobbying services who offer specialized knowledge or expertise that assists the employer's lobbying effort; \_\_\_\_\_
  - for entertainment, tickets, passes, travel expenses (e.g., transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families; (Also complete Item 9.) \_\_\_\_\_
  - for composing, designing, producing and distributing informational materials for use primarily to influence legislation; and \_\_\_\_\_
  - for grass roots lobbying expenses, including those previously reported by employer on Form L-6, and payments for lobbying communications to clients/customers (other than to corporate stockholders and members of an organization or union). \_\_\_\_\_
4. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. (Also complete Item 10.)
- Contributions made directly by the employer, including those previously reported on PDC Form L-3c. \_\_\_\_\_
  - If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this L-3 report.) \_\_\_\_\_  
Name of PAC \_\_\_\_\_
5. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. (Also complete Item 11.) \_\_\_\_\_
6. Expenditures to or on behalf of legislators, state officials, their spouses and dependents for the purpose of influencing, honoring or benefiting the legislator or official. (Normal course of business payments are not reportable.) (Also complete Item 14.) \_\_\_\_\_
7. Other lobbying-related expenditures, whether through or on behalf of a registered lobbyist. Attach list itemizing each expense (i.e., show date, recipient, purpose and amount). Do not include payments accounted for above. \_\_\_\_\_
- Total Lobbying Expenses \$  
(Items 2 thru 7)

8. This report must be certified by the president, secretary-treasurer or similar office of lobbying employer.

Certification: I certify that this report is true, complete and correct to the best of my knowledge.	Signature of Employer Officer	Date
Printed Name and Title of Officer:		

CONTINUE ON REVERSE

Page 2

L3

Employer's Name

Year report covers:

9. Entertainment, tickets, passes, travel expenses (including transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. See instruction manual for details.

Name and Title	Cost or Value	Date and Description of Expense
	\$	
<input type="checkbox"/> Information continued on attached pages		

10. Contributions (not reported by the lobbyist) totalling over \$25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure. Do not list employer-affiliated PAC contributions.

Name of Recipient	Amount	Date (and, if In-Kind, Description)
	\$	
<input type="checkbox"/> Information continued on attached pages		

11. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot proposition.

See instruction manual for definition of "independent expenditure."

Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	\$	
<input type="checkbox"/> Information continued on attached pages		

12. Compensation of \$1,500 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Elected Official if Member of Family	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation
<input type="checkbox"/> Information continued on attached pages			

13. Compensation of \$1,500 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation
<input type="checkbox"/> Information continued on attached pages			

14. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Purpose
	\$	
<input type="checkbox"/> Information continued on attached pages		

**\*\*DOLLAR  
CODE AMOUNT**

A - \$1 to \$2,999  
B - \$3,000 to \$14,999  
C - \$15,000 to \$29,999

**\*\*DOLLAR  
CODE AMOUNT**

D - \$30,000 to \$74,999  
E - \$75,000 or more

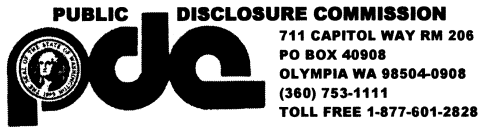
[Statutory Authority: RCW 42.17.370. 05-06-070, § 390-20-110, filed 3/1/05, effective 4/1/05; 04-02-028, § 390-20-110, filed 12/31/03, effective 1/31/04. Statutory Authority: RCW 42.17.370(1). 02-03-018, § 390-20-110, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370(1) and 42.17.180 (1)(h). 98-01-062, § 390-20-110, filed 12/11/97, effective 1/11/98. Statutory Authority: RCW 42.17.370(1). 96-01-103, § 390-20-110, filed 12/19/95, effective 1/19/96. Statutory Authority: RCW 42.17.390. 95-01-074A, § 390-20-110, filed 12/16/94, effective 1/16/95. Statutory Authority: RCW 42.17.370. 93-04-072, § 390-20-110, filed 1/29/93, effective 3/1/93; 90-22-018, § 390-20-110, filed 10/29/90, effective 11/29/90. Statutory Authority: RCW 42.17.370(1). 87-05-001 (Order 87-01), § 390-20-110, filed 2/5/87; 85-24-020 (Order 85-05), § 390-20-110, filed 11/26/85; 84-05-018 (Order 84-01), § 390-20-110, filed 2/10/84; Order 62, § 390-20-110, filed 8/26/75.]

**Reviser's note: Notice of Objection:** The Joint Administrative Rules Review Committee finds that WAC 390-20-110 has not been modified, amended, withdrawn, or repealed by the Public Disclosure Commission so as to conform with the intent of the Legislature as expressed in RCW 42.17.170 and 42.17.180. Therefore, pursuant to its authority under RCW 34.04.240, this notice of objection is filed.

The Joint Committee finds that WAC 390-20-110 requires the disclosure of information from lobbyists' employers which RCW 42.17.170 specifically excludes from reporting by lobbyists. It is the opinion of the Joint Committee that the Commission is attempting to obtain information from lobbyists' employers which the Commission would not otherwise be able to obtain from lobbyists themselves. This would thwart the express intent of the Legislature that such information is inappropriate for reporting. WAC 390-20-110 would effectively neuter the reporting exemptions in RCW 42.17.170—the Commission would have the information. This is not what the Legislature intended. [Joint Administrative Rules Review Committee, Memorandum, August 16, 1984—Filed August 28, 1984, WSR 84-18-014.]

**WAC 390-20-130 Forms for statement of employment of legislators, state officers, and state employees.**

The official form for statement of employment of legislators, state officers, and state employees as required by RCW 42.17.210 is designated "L-7" revised 5/05. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

**L7**

5/05

TO BE FILED BY  
**EMPLOYERS OF STATE LEGISLATORS  
 STATE OFFICERS OR  
 STATE EMPLOYEES**

EMPLOYER'S NAME AND BUSINESS ADDRESS

THIS SPACE FOR OFFICE USE

POSTMARK

DATE RECEIVED

DATE PREPARED: \_\_\_\_\_

THIS FORM

☐ AMENDS

PREVIOUS FILING

☐ REPLACES

PREPARED (DATE) \_\_\_\_\_

ITEM  
1

NAME OF PERSON BEING EMPLOYED

ITEM  
2

DESCRIPTION OF WORK BEING PERFORMED

ITEM  
3

AMOUNT OF COMPENSATION

ITEM  
4

DESCRIPTION OF COMPENSATION

ITEM  
5

STATE OFFICE OR POSITION HELD BY PERSON NAMED IN #1 ABOVE (include title and employing agency, board, or commission)

**INSTRUCTIONS**

**WHO SHOULD FILE THIS FORM:** Any person registered or required to be registered as a lobbyist under this act or any employer of any person registered or required to be registered as a lobbyist under this act, who employs a member of the legislature, an employee of the legislature, a member of a state board or commission, or a full-time state employee, if that employee remains partially employed by the state.

**FILING DEADLINE:** Within 15 days after commencement of employment.

**FORM TO BE SUBMITTED TO:** Public Disclosure Commission.

**CERTIFICATION:** I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

SIGNATURE

TITLE

DATE

**EXCERPT FROM PUBLIC DISCLOSURE LAW**

**RCW 42.17.210 — Employment of legislators, board or commission members, or state employees -- Statement, contents and filing.**

If any person registered or required to be registered as a lobbyist under this chapter employs, or if any employer of any person registered or required to be registered as a lobbyist under this chapter, employs any member of the legislature, or any member of any state board or commission, or any employee of the legislature, or any full-time state employee, if such new employee shall remain in the partial employ of the state or any agency thereof, then the new employer shall file a statement under oath with the commission setting out the nature of the employment, the name of the person to be paid thereunder, and the amount of pay or consideration to be paid thereunder. The statement shall be filed within fifteen days after the commencement of such employment.

[Statutory Authority: RCW 42.17.370. 05-11-002, § 390-20-130, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 42.17.370(1). 02-03-018, § 390-20-130, filed 1/4/02, effective 2/4/02; 85-24-020 (Order 85-05), § 390-20-130, filed 11/26/85; Order 62, § 390-20-130, filed 8/26/75.]

## Chapter 390-24 WAC

## FORMS FOR REPORTS OF FINANCIAL AFFAIRS

## WAC

390-24-010

Forms for statement of financial affairs.

390-24-020

Forms for amending statement of financial affairs.

**WAC 390-24-010 Forms for statement of financial affairs.** The official form for statements of financial affairs as required by RCW 42.17.240 is designated "F-1," revised 2/05. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington 98504-0908. Any paper attachments must be on 8-1/2" x 11" white paper.



<b>PDC FORM</b> <b>F-1</b> (2/05)	<b>PERSONAL FINANCIAL AFFAIRS STATEMENT</b>		P M PDC OFFICE USE O A R K T  R E C E I V E D
	<b>DOLLAR CODE</b> A \$1 to \$2,999 B \$3,000 to \$14,999 C \$15,000 to \$29,999 D \$30,000 to \$74,999 E \$75,000 or more	<b>AMOUNT</b>	

Refer to instruction manual for detailed assistance and examples.

**Deadlines:** Incumbent elected and appointed officials -- by April 15.  
 Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.

**SEND REPORT TO PUBLIC DISCLOSURE COMMISSION**

Last Name _____ First _____ Middle Initial _____  Mailing Address (Use PO Box or Work Address) _____  City _____ County _____ Zip + 4 _____  Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ year _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional staff of the Governor's Office and the Legislature	Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.  Office Held or Sought Office title: _____ County, city, district or agency of the office, name and number: _____ Position number: _____ Term begins: _____ ends: _____
--	---

**1****INCOME**

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received \$1,500 or more during the period. (Report interest and dividends in Item 3 on reverse)

Show Self (S) Spouse (SP) Dependent (D)	Name and Address of Employer or Source of Compensation          Check Here <input type="checkbox"/> if continued on attached sheet	Occupation or How Compensation Was Earned          	Amount: (Use Code)
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**2****REAL ESTATE**

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over \$7,500 in which you or a family member held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received		
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original Current
All Other Property Entirely or Partially Owned					
Check here <input type="checkbox"/> if continued on attached sheet					

**CONTINUE ON NEXT PAGE**

<b>3</b>	<b>ASSETS / INVESTMENTS - INTEREST / DIVIDENDS</b>	List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.			
<p>A. Name and address of each bank or financial institution in which you or a family member had an account over \$15,000 any time during the report period.</p> <p>B. Name and address of each insurance company where you or a family member had a policy with a cash or loan value over \$15,000 during the period.</p> <p>C. Name and address of each company, association, government agency, etc. in which you or a family member owned or had a financial interest worth over \$1,500. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property.</p>	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)		
Check here <input type="checkbox"/> if continued on attached sheet.					
<b>4</b>	<b>CREDITORS</b>	List each creditor you or a family member owed \$1,500 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.			<b>AMOUNT (USE CODE)</b>
Creditor's Name and Address		Terms of Payment	Security Given	Original	Present
Check here <input type="checkbox"/> if continued on attached sheet.					
<b>5</b>	<p><b>All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.</b></p> <p><b>Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.</b></p> <p>A. Were you, your spouse or dependents an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity at any time during the reporting period? ___ If yes, complete Supplement, Part A.</p> <p>B. Did you, your spouse or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? ___ If yes, complete Supplement, Part A.</p> <p>C. Did you, your spouse or dependents own a business at any time during the reporting period? ___ If yes, complete Supplement, Part A.</p> <p>D. Did you, your spouse or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? ___ If yes, complete Supplement, Part B.</p> <p>E. <b>Only for Persons Filing Annual Report.</b> Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? ___ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse and/or dependents to travel or to attend a seminar or other training? ___ If yes to either or both questions, complete Supplement, Part C.</p>				
<p><b>ALL FILERS EXCEPT CANDIDATES.</b> Check the appropriate box.</p> <p><input type="checkbox"/> I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.</p> <p><input type="checkbox"/> I hold a local elected office. I have read and am familiar with RCW 42.17.130 regarding the use of public facilities in campaigns.</p>			<p><b>CERTIFICATION:</b> I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.</p> <hr/> <p>Signature _____ Date _____</p> <p>Contact Telephone: (     ) _____</p> <p>Email: _____(work)</p> <p>Email: _____(Home)</p>		

REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE



**PUBLIC DISCLOSURE COMMISSION**  
 **711 CAPITOL WAY RM 206**  
**PO BOX 40908**  
**OLYMPIA WA 98504-0908**  
**(360) 783-1111**  
**TOLL FREE 1-877-601-2828**  
**EMAIL: pdc@pdc.wa.gov**

PDC FORM  
**F-1**  
 SUPPLEMENT  
 (2/08)

**SUPPLEMENT PAGE**  
**PERSONAL FINANCIAL AFFAIRS**  
**STATEMENT**

**PROVIDE INFORMATION FOR YOURSELF, SPOUSE, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD**

<b>Last Name</b>	<b>First</b>	<b>Middle Initial</b>	<b>DATE</b>
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**A**

**OFFICE HELD,  
 BUSINESS  
 INTERESTS:**

For each corporation, non-profit organization, association, union, partnership, joint venture or other entity in which you, your spouse or dependents are an officer, director, general partner, trustee, or 10 percent or more owner — provide the following information:

- **Legal Name:** Report name used on legal documents establishing the entity.
- **Trade or Operating Name:** Report name used for business purposes if different from the legal name.
- **Position or Percent of Ownership:** The office, title and/or percent of ownership held.
- **Brief Description of the Business/Organization:** Report the purpose, product(s), and/or the service(s) rendered.
- **Payments from Governmental Unit:** If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.
- **Payments from Business Customers and Other Government Agencies:** List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of \$7,500 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.
- **Washington Real Estate:** Identify real estate owned by the business entity if the qualifications referenced below are met.

**ENTITY NO. 1**

Reporting For: Self ☐ Spouse ☐ Dependent ☐

**LEGAL NAME:**

**POSITION OR PERCENT OF OWNERSHIP**

**TRADE OR OPERATING NAME:**

**ADDRESS:**

**BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:**

**PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:**

Purpose of payments

Amount (actual dollars)

\$

**PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OVER \$7,500:**

Customer name:

Purpose of payment (amount not required)

**WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST** (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):

Check here ☐ if continued on attached sheet

**CONTINUE PARTS B AND C ON NEXT PAGE**

Page 2

**F-1 Supplement**

Name				
ENTITY NO. 2		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/>		
LEGAL NAME:		POSITION OR PERCENT OF OWNERSHIP		
TRADE OR OPERATING NAME:				
ADDRESS:				
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:				
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE: <div style="display: flex; justify-content: space-between;"> <span>Purpose of payments</span> <span>Amount (actual dollars)</span> </div> <div style="text-align: center; margin-top: 10px;">\$</div>				
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OVER \$7,500: <div style="display: flex; justify-content: space-between;"> <span>Customer name:</span> <span>Purpose of payment (amount not required)</span> </div>				
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):				
Check here <input type="checkbox"/> if continued on attached sheet				
<b>B LOBBYING:</b> List persons for whom you or any immediate family member lobbied or prepared state legislation or state rules, rates or standards for current or deferred compensation. Do not list pay from government body in which you are an elected official or professional staff member.				
Person to Whom Services Rendered		Description of Legislation, Rules, Etc.		Compensation (Use Code)
Check here <input type="checkbox"/> if continued on attached sheet				
<b>C FOOD TRAVEL SEMINARS</b> Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse or dependents, or a combination thereof: 1) Food and beverages costing over \$50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	
Check here <input type="checkbox"/> if continued on attached sheet				

[Statutory Authority: RCW 42.17.370. 05-06-070, § 390-24-010, filed 3/1/05, effective 4/1/05; 02-20-036, § 390-24-010, filed 9/24/02, effective 10/25/02. Statutory Authority: RCW 42.17.370(1). 00-22-053, § 390-24-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370 (1) and (11) and 42.17.241 (1)(n). 97-23-020, § 390-24-010, filed 11/10/97, effective 1/1/98. Statutory Authority: RCW 42.17.370(1). 96-09-017, § 390-24-010, filed 4/8/96, effective 5/9/96. Statutory Authority: RCW 42.17.370. 91-24-011, § 390-24-010, filed 11/22/91, effective 12/23/91. Statutory Authority: RCW 42.17.370(1). 88-20-029 (Order 88-04), § 390-24-010, filed 9/29/88; 86-19-039 (Order 86-06), § 390-24-010, filed 9/12/86; 86-08-030 (Order 86-02), § 390-24-010, filed 3/26/86; 85-24-020 (Order 85-05), § 390-24-010, filed 11/26/85; 84-01-017 (Order 83-03), § 390-24-010, filed 12/9/83; 80-18-028 (Order 80-07), § 390-24-010, filed 12/1/80; 80-02-055 (Order 80-01), § 390-24-010, filed 1/17/80; Order 94, § 390-24-010, filed 10/31/77; Order 87, § 390-24-010, filed 11/19/76; Order 62, § 390-24-010, filed 8/26/75; Order 48, § 390-24-010, filed 3/3/75; Order 44, § 390-24-010, filed 9/26/74; Order 6, § 390-24-010, filed 3/23/73.]

(4) Copies of Form F-1A are available at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington 98504-0908. Any paper attachments must be on 8-1/2" x 11" white paper.

[2006 WAC Supp—page 1751]

[Statutory Authority: RCW 42.17.370. 05-06-070, § 390-24-020, filed 3/1/05, effective 4/1/05; 02-20-036, § 390-24-020, filed 9/24/02, effective 10/25/02. Statutory Authority: RCW 42.17.370(1). 00-22-052, § 390-24-020, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370 (1) and (11) and 42.17.241 (1)(n). 97-23-020, § 390-24-020, filed 11/10/97, effective 1/1/98. Statutory Authority: RCW 42.17.370(1). 96-09-017, § 390-24-020, filed 4/8/96, effective 5/9/96. Statutory Authority: RCW 42.17.370. 91-24-011, § 390-24-020, filed 11/22/91, effective 12/23/91. Statutory Authority: RCW 42.17.370(1). 86-19-039 (Order 86-06), § 390-24-020, filed 9/12/86; 86-08-030 (Order 86-02), § 390-24-020, filed 3/26/86; 84-01-017 (Order 83-03), § 390-24-020, filed 12/9/83; 79-11-124 (Order 79-07), § 390-24-020, filed 11/6/79; Order 94, § 390-24-020, filed 10/31/77; Order 87, § 390-24-020, filed 11/19/76; Order 62, § 390-24-020, filed 8/26/75; Order 48, § 390-24-020, filed 3/3/75.]

## Chapter 390-37 WAC

### ENFORCEMENT HEARING (ADJUDICATIVE PROCEEDING) RULES

#### WAC

390-37-060	Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).
390-37-090	Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.
390-37-160	Statement of financial affairs (F-1) penalty schedule.
390-37-165	Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.
390-37-170	Lobbyist monthly expense report (L-2) penalty schedule.
390-37-175	Lobbyist employer report (L-3) penalty schedule.

**WAC 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).** (1) Upon receipt of a complaint not obviously unfounded or frivolous, the executive director shall direct an investigation be conducted. If after an initial review of the complaint it is determined that a complete and thorough investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before continuing the investigation.

(2) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever an investigation reveals facts that the executive director has reason to believe are a material violation of the sections of chapter 42.17 RCW under the commission's jurisdiction, and do not constitute substantial compliance.

(3) The respondent shall be notified of the date of the adjudicative proceeding no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434. The complainant shall also be provided a copy of this notice.

(4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). If a request is made for any such record that implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17-330. Certain documents shall be returned to candidates, campaigns, or political committees as required by RCW 42.17-365 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

[Statutory Authority: RCW 42.17.370. 05-11-001, § 390-37-060, filed 5/4/05, effective 6/4/05; 03-22-065, § 390-37-060, filed 11/4/03, effective 12/5/03; 93-24-003, § 390-37-060, filed 11/18/93, effective 12/19/93; 91-16-072, § 390-37-060, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-060, filed 2/5/86; 84-12-017 and 84-12-029 (Orders 84-03 and 84-03A), § 390-37-060, filed 5/25/84 and 5/29/84; Order 81, § 390-37-060, filed 7/22/76.]

**WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.** (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. The stipulation shall be provided at the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

[Statutory Authority: RCW 42.17.370. 05-11-001, § 390-37-090, filed 5/4/05, effective 6/4/05; 03-22-065, § 390-37-090, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-090, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-090, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-090, filed 5/25/84; Order 81, § 390-37-090, filed 7/22/76.]

**WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

**Provisos:**

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370, 05-04-038, § 390-37-160, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-160, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$150 per report	\$300 per report, up to \$500	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100 per report	\$200 per report	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100 per report	\$100 - \$200 per report	\$200 - \$400	Full commission consideration

**Provisos:**

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise

prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. 05-04-038, § 390-37-165, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-165, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

**Provisos:**

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer. Except in rare circumstances, the non-suspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may

impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. 05-04-038, § 390-37-170, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-170, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

**Provisos:**

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(a) Was found in violation during a previous reporting

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. 05-04-038, § 390-37-175, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-175, filed 11/4/03, effective 12/5/03.]

## Title 392 WAC

# PUBLIC INSTRUCTION, SUPERINTENDENT OF

### Chapters

<b>392-109</b>	<b>State board of education—Election of members.</b>
<b>392-121</b>	<b>Finance—General apportionment.</b>
<b>392-122</b>	<b>Finance—Categorical apportionment.</b>
<b>392-123</b>	<b>Finance—School district budgeting.</b>
<b>392-125</b>	<b>Finance—Educational service district budgeting.</b>
<b>392-126</b>	<b>Finance.</b>
<b>392-136</b>	<b>Finance—Conversion of accumulated sick leave.</b>
<b>392-140</b>	<b>Finance—Special allocations, instructions, and requirements.</b>
<b>392-142</b>	<b>Transportation—Replacement and depreciation allocation.</b>
<b>392-168</b>	<b>Special service programs—Citizen complaint procedure for certain categorical federal programs.</b>

### Chapter 392-109 WAC

#### STATE BOARD OF EDUCATION—ELECTION OF MEMBERS

#### WAC

392-109-037	Purpose and authority.
392-109-040	Composition.
392-109-043	Election officer.
392-109-045	Definitions.
392-109-047	Annual elections.
392-109-048	Election timeline.
392-109-050	Information necessary for the conduct of elections— Responsibility of school officials.
392-109-060	Publicity and call of election.
392-109-065	Candidates—Eligibility—Filing.
392-109-070	Declaration and affidavit of candidacy form.
392-109-075	Biographical data form.
392-109-077	Withdrawal of candidacy.
392-109-078	Certificate of electors.
392-109-080	Ballots—Contents.
392-109-085	Ballots and envelopes—Mailing to electors.
392-109-090	Voting—Marking and return of ballots.
392-109-095	Election committee—Appointment and composition.
392-109-100	Receipt of ballots and count of votes.
392-109-105	Ineligible votes.
392-109-111	Run-off election.
392-109-112	Dispute resolution.
392-109-115	Report and certification of election.
392-109-117	Publishing of names.
392-109-120	Vacancies and special elections.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-109-055	Publicity. [Statutory Authority: RCW 28A.04.020. 81-17-005 (Order 81-10), § 392-109-055, filed 8/7/81; 80-07-038 (Order 80-20), § 392-109-055, filed 6/17/80.] Repealed by 05-22-007, filed 10/20/05, effective 11/20/05. Statutory Authority: Chapter 28A.305 RCW and ESSB 5732.
392-109-058	Tentative certification of electors. [Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-058, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-058, filed 5/15/84.] Repealed by 05-22-007, filed 10/20/05, effective 11/20/05. Statutory Authority: Chapter 28A.305 RCW and ESSB 5732.
392-109-072	Candidates for new congressional district positions—First elections—Term of office. [Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-072, filed 3/21/96, effective 4/21/96. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-109-072, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.04.020. 82-16-037 (Order 82-7), § 392-109-072, filed 7/28/82.] Repealed by 05-22-007, filed 10/20/05, effective 11/20/05. Statutory Authority: Chapter 28A.305 RCW and ESSB 5732.
392-109-110	Recount of votes cast—Automatic—By request. [Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-110, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-110, filed 6/17/80.] Repealed by 05-22-007, filed 10/20/05, effective 11/20/05. Statutory Authority: Chapter 28A.305 RCW and ESSB 5732.

**WAC 392-109-037 Purpose and authority.** (1) The purpose of this chapter is to provide for the annual election of members to the state board of education by establishing policies and procedures which implement the statutory election process for such positions.

(2) Authority for this chapter is RCW 28A.305.102 which authorizes the superintendent of public instruction to adopt rules and procedures for the conduct of election of members to the state board of education.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-037, filed 10/20/05, effective 11/20/05. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-109-037, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-037, filed 5/15/84.]

**WAC 392-109-040 Composition.** The state board of education consists of sixteen members: Seven members appointed by the governor; five members, including two from eastern Washington and three from western Washington, elected by the members of public school boards of directors; one member elected by approved private school boards of directors; the superintendent of public instruction; and two student representatives selected by the state board of education.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-040, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-040, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-040, filed 5/15/84; 82-16-037 (Order 82-7), § 392-109-040, filed 7/28/82; 80-07-038 (Order 80-20), § 392-109-040, filed 6/17/80.]

**WAC 392-109-043 Election officer.** In accordance with RCW 28A.305.102 the superintendent of public instruction or his or her designee shall serve as the election officer for the coordination and conduct of the election of members to the state board of education.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-043, filed 10/20/05, effective 11/20/05. Statutory Authority: 1990

c 33. 90-16-002 (Order 18), § 392-109-043, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-043, filed 5/15/84.]

**WAC 392-109-045 Definitions.** As used in this chapter the term:

(1) "Board of directors" shall mean:

(a) The statutory, multimember board of directors of a public school district; or

(b) The person or multimember body recognized by an approved private school as having the final authority for policy decisions which govern the operation of the private school.

(2) "Elector" shall mean:

(a) Each individual member of a public school board of directors; or

(b) An approved private school board of directors as a whole.

(3) "Approved private school" shall mean a school which is approved by the state board of education pursuant to chapter 180-90 WAC, as now or hereafter amended, as being in compliance with statutory standards.

(4) "Eastern Washington region" shall mean the region comprised of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(5) "Western Washington region" shall mean the region comprised of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

(6) "Weighted vote" shall mean the total number of electoral votes assigned to an elector for:

(a) Public schools: Each elector shall be entitled to a number of electoral votes equal to:

School District Student Enrollment		Each Elector Receives
1	- 1,000	1 vote
1,001	- 2,000	2 votes
2,001	- 3,000	3 votes
3,001	- 4,000	4 votes
4,001	- 5,000	5 votes
5,001	- 6,000	6 votes
6,001	- 7,000	7 votes
7,001	- 8,000	8 votes
8,001	- 9,000	9 votes
9,001	- 10,000	10 votes
10,001	- 15,000	11 votes
15,001	- 20,000	12 votes
20,001	- 25,000	13 votes
25,001	- 30,000	14 votes
30,001	- 35,000	15 votes
35,001	- 40,000	16 votes
40,001	- or greater	17 votes

(b) Approved private schools: Each approved private school shall be entitled to a number of electoral votes equal to the actual number of students enrolled.

(7) "Student enrollment" shall mean the number of students enrolled during October of the preceding school year as reported to the superintendent of public instruction.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-045, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 80-07-038 (Order 80-20), § 392-109-045, filed 6/17/80.]

**WAC 392-109-047 Annual elections.** Election of members to the state board of education shall be conducted each year preceding a year in which the term of one or more members expires, and as required by RCW 28A.305.102 following a vacancy on the board.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-047, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-047, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-047, filed 5/15/84.]

**WAC 392-109-048 Election timeline.** An official election timeline shall be published by the superintendent of public instruction at the call of each yearly election that shall include all necessary dates for the conduct of election.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-048, filed 10/20/05, effective 11/20/05.]

**WAC 392-109-050 Information necessary for the conduct of elections—Responsibility of school officials.** It shall be the responsibility of each member of a board of directors to assure that the superintendent of public instruction is provided current and correct information necessary for the conduct of the elections provided for in this chapter. Forms published by the superintendent of public instruction for the purpose of providing the following essential information shall be obtained, completed and submitted on a current basis:

(1) Approved private schools: The mailing address and previous October student enrollment; and

(2) Public school districts: The name, legal residence, mailing address and region, as defined in WAC 392-109-034, of residence for each member of a board of directors.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-050, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-050, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-050, filed 6/17/80.]

**WAC 392-109-060 Publicity and call of election.** On or before August twenty-fifth of each year the superintendent of public instruction shall publicize notice of an election to be held for each position on the state board of education subject to election by public and approved private school boards of directors. Notice shall be made by, but not limited to:

(1) An official press release containing the call of election materials citing the election rules, declaration and affidavit of candidacy, biographical data form, and election timeline.

(2) Making the call of election materials in subsection (1) of this section available by contacting: Administrative Resource Services, Office of the Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200.

(3) Making the call of election materials in subsection (1) of this section available on the superintendent of public instruction's official web site at [www.k12.wa.us](http://www.k12.wa.us).



[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-060, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-060, filed 5/15/84; 81-17-005 (Order 81-10), § 392-109-060, filed 8/7/81; 80-07-038 (Order 80-20), § 392-109-060, filed 6/17/80.]

### **WAC 392-109-065 Candidates—Eligibility—Filing.**

(1) Eligibility: A person is eligible to be a candidate for only one position on the state board of education at a time.

(a) A candidate for a vacancy among the five positions on the state board elected by members of public school boards of directors must be a resident of the region represented by the position and meet the other qualifications established by RCW 28A.305.102; and

(b) A candidate for a vacancy in the position on the state board elected by private schools must be a resident of the state of Washington and meet the other qualifications established by RCW 28A.305.102.

(2) Forms for filing: A person who desires to be a candidate shall complete:

(a) The declaration and affidavit of candidacy form provided for in WAC 392-109-070; and

(b) The biographical data form provided for in WAC 392-109-075: Provided, That a declarant may elect not to submit biographical data.

(3) Filing period: The filing period for candidates for any position on the state board of education elected by either public or approved private school boards of directors shall be no less than seven days in duration and occur a minimum of sixty days prior to election and shall be included on the election timeline. Declarations not received by 5:00 p.m. on the indicated date will not be included on the certified list of candidates.

(4) Filing deadline: The filing deadline for candidacy shall be 5:00 p.m. on the date included on the election timeline.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-065, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-065, filed 3/21/96, effective 4/21/96. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-109-065, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.04.020. 82-16-037 (Order 82-7), § 392-109-065, filed 7/28/82; 80-07-038 (Order 80-20), § 392-109-065, filed 6/17/80.]

**WAC 392-109-070 Declaration and affidavit of candidacy form.** The declaration and affidavit of candidacy form which each candidate is required to substantially complete and to file as a condition to having his or her name placed on an official ballot is available from the superintendent of public instruction and shall be as follows:

I, . . . . ., solemnly swear (or affirm): That (if filing for a position elected by members of public school boards of directors) I reside in the . . . . . Region of the state of Washington (OR if filing for the position elected by private schools) I reside within the state of Washington; That I am aware that if elected, I cannot concurrently serve as a member of the state board of education and as an employee of any school, college, university, or other educational institution, or any educational service district superintendent's office, or in the office of the superintendent of public instruction, or as a member of the board of directors of either a common school district or a private school; and, That I hereby declare myself a candidate for membership on the state board of education

for . . . . . Region, Position No. . . . , a term beginning on the second Monday in January, 20. . . , subject to the election to be held during the month of November, 20. . . , and I request that my name be listed on the ballot thereof.

Further, I solemnly swear (or affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

(Print Name) . . . . .

(Signature) . . . . .

Address: . . . . .

. . . . .

Telephone number . . . . .

State of Washington

County of . . . . .

Signed and sworn to (or affirmed) before me on \_\_\_\_ (date)

by (name of person making statement) \_\_\_\_\_

(Signature) . . . . .

(Seal or stamp)

Notary Public

My appointment

expires . . . . .

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-070, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-070, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-15-026 (Order 84-27), § 392-109-070, filed 7/11/84; 80-07-038 (Order 80-20), § 392-109-070, filed 6/17/80.]

**WAC 392-109-075 Biographical data form.** (1) The superintendent of public instruction shall provide a biographical data form not exceeding one letter size double spaced minimum twelve point font typewritten page in length which each candidate may complete.

(2) Biographical data forms shall be reproduced as submitted and distributed by the superintendent of public instruction with the official ballots to each elector.

(3) Candidates may submit a two-inch by two-inch headshot photograph with this form.

(4) Filing of this form is not required.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-075, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-075, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-075, filed 6/17/80.]

**WAC 392-109-077 Withdrawal of candidacy.** Any candidate may withdraw his or her declaration of candidacy by delivering a written, signed and notarized statement of withdrawal to the superintendent of public instruction on or before 5:00 p.m. on the date included on the election timeline. A candidate's failure to withdraw as prescribed above shall result in the inclusion of the candidate's name on the appropriate election ballot.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-077, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 81-17-005 (Order 81-10), § 392-109-077, filed 8/7/81.]

**WAC 392-109-078 Certificate of electors.** (1) The list of eligible electors shall remain open for changes and deletions until 5:00 p.m. on the date included on the election timeline.

(2) The superintendent of public instruction as soon thereafter as is practical shall certify the list of electors and

the weighted vote for each elector to be used for election purposes.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-078, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-078, filed 5/15/84.]

**WAC 392-109-080 Ballots—Contents.** The ballot for each position subject to election pursuant to this chapter shall:

- (1) Contain the names of each candidate eligible for the particular position.
- (2) Be prepared for each region.
- (3) Set forth the number of electoral votes to which each elector is entitled.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-080, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-080, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-080, filed 6/17/80.]

**WAC 392-109-085 Ballots and envelopes—Mailing to electors.** (1) Ballots shall be mailed to electors on the date included on the election timeline, together with two envelopes to be used for voting.

(a) The outer and larger envelope (i.e., official ballot return envelope) shall:

- (i) Be labeled "official ballot return envelope";
- (ii) Be preaddressed with the "superintendent of public instruction" as addressee; and
- (iii) Have provision for the identification of the elector, his or her school district or school and his or her home address.

(b) The inner and smaller envelope shall be unlabeled and unmarked.

(2) One official ballot and the two envelopes to be used for voting purposes, any candidates' biographical data and pertinent instructions for voting purposes shall be mailed to each member of a public school district board of directors.

(3) One official ballot, two envelopes to be used for voting purposes, any candidates' biographical data and pertinent instructions for voting purposes shall be mailed to each approved private school addressed to the chief administrator of each approved private school.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-085, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-085, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-085, filed 5/15/84; 81-17-005 (Order 81-10), § 392-109-085, filed 8/7/81; 80-07-038 (Order 80-20), § 392-109-085, filed 6/17/80.]

**WAC 392-109-090 Voting—Marking and return of ballots.** (1) Each member of a public school district board of directors may vote for one of the candidates for each position named on his or her official ballot by placing an "x" or other mark in the space provided next to the name of a candidate.

(2) Each approved private school may vote for one candidate on the official ballot by placing an "x" or other mark in the space provided next to the name of a candidate.

(3) Each member of a public school district board of directors and each approved private school shall complete voting by:

- (a) Placing the marked official ballot in the smaller, unmarked envelope and sealing the same;

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(b) Placing the smaller unmarked envelope containing the official ballot in the larger preaddressed envelope marked "official ballot return envelope" and sealing the same; and

(c) Affixing proper postage and placing the official ballot return envelope in the United States mail or otherwise delivering the envelope to the superintendent of public instruction.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-090, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-090, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-090, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-090, filed 6/17/80.]

**WAC 392-109-095 Election committee—Appointment and composition.** The superintendent of public instruction shall annually appoint a three member election committee and at least one alternate who shall serve thereon in the absence of a regular member of the election committee. Counting of votes cast at elections conducted pursuant to this chapter shall be supervised by the superintendent of public instruction or his or her designee and the election committee.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-095, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-095, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-095, filed 6/17/80.]

**WAC 392-109-100 Receipt of ballots and count of votes.** (1) As official ballot return envelopes are received by the superintendent of public instruction, a preliminary determination shall be made as to the eligibility of the elector, and a record shall be made on a list of eligible electors and approved private schools that the elector has voted.

(2) Official ballot return envelopes not submitted in compliance with this chapter and other envelopes containing ballots shall be set aside for a final review and acceptance or rejection by the election committee.

(3) The election committee shall convene for the purpose of counting votes on the date included on the election timeline.

(a) Official ballot return envelopes accepted by the election committee shall be opened and the inner unmarked envelopes containing the official ballots shall be removed and placed aside still sealed.

(b) The inner unmarked envelopes shall then be opened and the votes counted by the election committee.

(4) No record shall be made or maintained of the candidate for whom any elector cast his or her vote.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-100, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-100, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-100, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-100, filed 6/17/80.]

**WAC 392-109-105 Ineligible votes.** The following ballots and votes shall be declared void and shall not be accepted:

- (1) Votes for write-in candidates;
- (2) Votes cast on other than an official ballot provided pursuant to this chapter;

(3) Ballots which contain a vote for two or more of the named candidates;

(4) Ballots contained in other than an official ballot return envelope provided pursuant to this chapter;

(5) Ballots contained in an official ballot return envelope upon which the elector is not designated by name;

(6) Ballots received after 5:00 p.m. on the date included on the election timeline. Provided, that any official ballot return envelope that is postmarked on or before midnight of the above date and received pursuant to the United States mail prior to the initial counting of votes by the election committee shall be accepted; and

(7) Such other ballots or votes as the election committee shall determine to be unidentifiable or unlawful.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-105, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-105, filed 3/21/96, effective 4/21/96. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-105, filed 5/15/84; 80-07-038 (Order 80-20), § 392-109-105, filed 6/17/80.]

**WAC 392-109-111 Run-off election.** If no candidate for any one position receives a minimum of fifty percent plus one of the total votes for such position, the superintendent of public instruction shall call a run-off election between the two candidates receiving the two highest vote totals for such position.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-111, filed 10/20/05, effective 11/20/05.]

**WAC 392-109-112 Dispute resolution.** (1) Any public school district board member or any approved private school eligible to vote for a candidate for membership on the state board of education or any candidate for the position, within ten days after the superintendent of public instruction's reporting of election, may contest the election of a candidate for any of the following causes:

(a) Because the person whose right is being contested gave a bribe or reward to an elector for the purpose of procuring the candidate's election, or offered to do so; or

(b) On account of illegal votes.

(2) An action contesting an election pursuant to this chapter shall be conducted in compliance with chapter 29A.68 RCW, as now or hereafter amended.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-112, filed 10/20/05, effective 11/20/05.]

**WAC 392-109-115 Report and certification of election.** (1) On the date included on the election timeline, but no later than December 15, if a candidate receives a minimum of fifty percent plus one of the total votes for a position, the superintendent shall publicly announce and certify the election results; or

(2) If a candidate does not receive a minimum of fifty percent plus one of the total votes for a position, the superintendent shall publicly announce the need for a run-off election; the results of which shall be announced and certified no more than ten days after election.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-115, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 84-11-038 (Order 84-8), § 392-109-115, filed 5/15/84; 81-17-

005 (Order 81-10), § 392-109-115, filed 8/7/81; 80-07-038 (Order 80-20), § 392-109-115, filed 6/17/80.]

**WAC 392-109-117 Publishing of names.** As soon as reasonably possible after each annual election the superintendent of public instruction shall publish the names of the electors and approved private schools who voted in the election.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-117, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.04.020. 90-04-043 (Order 90-01), § 392-109-117, filed 1/31/90, effective 3/3/90; 81-17-005 (Order 81-10), § 392-109-117, filed 8/7/81.]

#### **WAC 392-109-120 Vacancies and special elections.**

(1) Whenever a vacancy among members elected by public school boards of directors occurs on the state board of education, from any cause whatsoever, it shall be the duty of the remaining members representing public school boards of directors to fill such vacancy by appointment consistent with the appropriate regional position being vacated, and the person so appointed shall continue in office until his or her successor has been specially elected.

(2) Whenever a vacancy of the approved private school elected member occurs on the state board of education, from any cause whatsoever, it shall be the duty of the private school advisory committee to fill such vacancy consistent with qualifications in RCW 28A.305.102 and the person so appointed shall continue in office until his or her successor has been specially elected.

(3) When a vacancy occurs, the superintendent of public instruction shall include such a position in the call of election the following year; a special election to be held in the same manner as other elections provided for in this chapter, at which election a successor shall be elected to hold office for the unexpired term of the member whose position was vacated.

(4) Special elections provided for in RCW 28A.305.102 shall be conducted in accordance with this chapter.

[Statutory Authority: Chapter 28A.305 RCW and ESSB 5732. 05-22-007, § 392-109-120, filed 10/20/05, effective 11/20/05. Statutory Authority: RCW 28A.305.020. 96-08-001 (Order 96-05), § 392-109-120, filed 3/21/96, effective 4/21/96. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-109-120, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.04.020. 80-07-038 (Order 80-20), § 392-109-120, filed 6/17/80.]

### **Chapter 392-121 WAC**

#### **FINANCE—GENERAL APPORTIONMENT**

##### **WAC**

392-121-108	Definition—Enrollment exclusions.
392-121-182	Alternative learning experience requirements.
392-121-262	Definition—Additional criteria for all credits.
392-121-465	Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program.

**WAC 392-121-108 Definition—Enrollment exclusions.** A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days shall not be counted as an enrolled student until attendance is resumed.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172-218 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - a student for whom the school district has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - a student who has transferred to another public or private school and for whom the school district has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district.

(4) Suspensions - a student who has been suspended from school pursuant to WAC 180-40-260, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - a student who has been expelled from all school subjects or classes by the school district pursuant to WAC 180-40-275 or 180-40-290 shall not be counted as an enrolled student; a student who has been partially expelled, such as from a single school subject or class, by the school district pursuant to WAC 180-40-275 or 180-40-290 may be considered a part-time enrolled student.

(6) Graduates - a student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

[Statutory Authority: RCW 28A.150.290, 05-19-140, § 392-121-108, filed 9/21/05, effective 10/22/05; 97-22-013 (Order 97-06), § 392-121-108, filed 10/27/97, effective 11/27/97; 95-01-013, § 392-121-108, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.150.290, 28A.150.250 and 28A.150.260, 91-02-096 (Order 50), § 392-121-108, filed 1/2/91, effective 2/2/91. Statutory Authority: 1990 c 33, 90-16-002 (Order 18), § 392-121-108, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.055 and 28A.41.170, 88-03-013 (Order 88-8), § 392-121-108, filed 1/11/88.]

**WAC 392-121-182 Alternative learning experience requirements.** (1) An alternative learning experience may be counted as a course of study. A school district alternative learning experience may make use of digital and/or on-line curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience may also include significant participation by students, parents, and families in the design and implementation of a student's learning experience. This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

(a) Individual courses of study for students who meet the definition for enrollment specified by WAC 392-121-106. Students may enroll part-time in alternative learning experiences. Such enrollment shall be subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC;

(b) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 180-82 WAC, or a contractor pursuant to WAC 392-121-188;

(c) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

(d) Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.

This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

An alternative learning experience may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

(2) **School district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience that meets the minimum criteria pursuant to subsection (4) of this section;

(b) Require that the overall ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience programs and courses, including those that rely primarily on digital curriculum, be identified and approved by the school district board of directors in a public meeting;

(c) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

(d) Require each student enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course objectives or the requirements of the learning plan. Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities. Direct personal contact means a face-to-face meeting with the student and, where appropriate, the student's parent or guardian. In establishing policies for alternative learning experience programs and program providers, the school district board of directors may determine that direct personal contact can be accomplished through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication, instead of a face-to-face meeting, if in the judgment of the board such contact methods do not compromise educational quality, student health and safety, or the fiscal integrity of the district;

(e) Require that each student's educational progress be reviewed at least monthly and that the results of each review

be communicated to the student and if the student is in grades K–8, the student's parent or guardian;

(f) At the discretion of the school district board, the policy may describe responsibilities of the student's parent(s) or guardian including, but not limited to:

(i) Approval of the written alternative learning experience plan;

(ii) Responsibility for the parent(s) or guardian to provide or implement a portion of the student's alternative learning experience under the supervision of school staff, if the parent(s) or guardian agrees; and

(iii) Requirements to meet with school staff for purposes of evaluating the student's performance and/or receiving instructions on assisting with the student's alternative learning experience. The school district board may also prescribe requirements for appointing a person to provide or supervise a portion of the student's alternative learning experience in the event the student's parent(s) or guardian will not or cannot be a participant in the student's alternative learning experience;

(g) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(i) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(ii) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

(iii) A description of how a written student learning plan pursuant to subsection (4) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

(iv) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(v) Results of any self-evaluations conducted pursuant to subsection (7) of this section;

(h) Satisfy the state board of education's requirements for courses of study and equivalencies (chapter 180-50 WAC);

(i) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements (chapter 180-51 WAC); and

(j) Identify what, if any, expenditures which are directly related to the written student learning plan and are paid by participants of an alternative learning experience may be subject to reimbursement by the district.

### **(3) Alternative learning experience implementation standards:**

(a) Alternative learning experiences shall be accessible to all students, including those with disabilities. Alternative learning experiences for special education students shall be provided in accordance with chapter 392-172 WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan. Curricula, course content, instructional materials, and other learning resources for alternative learning experiences shall at minimum be consistent in quality with those available to the district's overall student population. Instructional materials shall be provided in accordance with RCW 28A.320.230.

(c) Work-based learning as a component of an alternative learning experience course of study shall be subject to the provisions of WAC 180-50-315 and 392-121-124.

(d) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

(e) A school district that provides one or more alternative learning experiences to a student shall provide the parent(s) or guardian of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent or guardian shall sign documentation attesting to his or her understanding of the difference and the documentation shall be retained by the district and made available for audit.

(f) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(g) State funded public schools or public school programs whose primary purpose is to provide alternative learning experiences using digital or on-line means shall be accredited through the state accreditation program or through the regional accreditation program.

**(4) Written student learning plan:** Each student enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, the student's parents, and other interested parties, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress. The written student learning plan shall include, but not be limited to, the following elements:

(a) A beginning and ending date for the learning experience;

(b) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection (5) of this section and must be based upon the criteria in subsection (6) of this section;

(c) A description of how weekly contact requirements will be fulfilled;

(d) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning

requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

(e) Identification of instructional materials essential to successful completion of the learning plan; and

(f) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district. For a high school alternative learning experience, the plan shall specify whether the experience meets state and district graduation requirements.

**(5) Enrollment reporting:** Effective the 2005–06 school year, the full-time equivalency of students enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, the estimated average weekly hours of learning activity described in the written student learning plan;

(ii) On subsequent monthly count dates, if the student's progress review pursuant to subsection (6) of this section indicates satisfactory progress, the student's full-time equivalent shall be based on the estimated average weekly hours of learning activity identified in the student learning plan;

(iii) If the student's progress review indicates a lack of satisfactory progress, the student's full-time equivalent shall be based on the estimated average weekly hours of learning activity described in the student learning plan, and the actual number of hours the student engages in learning activity pursuant to the written student learning plan shall be documented during the ensuing month. Documented hours shall encompass only time spent on those learning activities intended to accomplish the learning goals and performance objectives identified in the written student learning plan, shall meet the following criteria and shall be verified by district staff:

(A) Those hours of classroom instruction provided by school staff;

(B) Those hours of work based learning calculated in accordance with WAC 392-121-107 (1)(f);

(C) Those hours of learning activity other than those specified in (a)(iii)(A), (B) and (D) of this subsection that are conducted and supervised by the student's parent(s) or guardian, or other person as designated by the written plan; and

(D) Those hours that the student participates in learning activities other than those specified in (a)(iii)(A), (B) and (C) of this subsection. If the student is in grades K–8, such learning activity shall be supervised by the student's parent(s) or guardian or other person designated by the written student learning plan;

(iv) On subsequent monthly count dates, if the student's progress review indicates a lack of satisfactory progress, the student's full-time equivalent shall be based on the actual

average weekly hours of learning activity documented during the prior month;

(v) Enrollment of part-time students shall be subject to the provisions of RCW 28A.150.350, and shall generate the pro rata share of full-time funding.

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for twenty consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in their alternative learning experience or participated in another course of study as defined in WAC 392-121-107;

(c) School districts providing alternative learning experiences to nonresident students shall document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate.

**(6) Accountability for student performance:**

(a) At minimum, students enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. If allowed by district policy, direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. The results of the review shall be communicated to the student and, where possible, the student's parent(s) or guardian.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student and, for students in grades K–8, the student's parent(s) or guardian.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff in conjunction with the student and, for students in grades K–8, the student's parent(s) or guardian.

(b) The educational progress of students enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students shall also be assessed at least annually. However, part-

time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(c) Students enrolled full-time in nonresident alternative learning experience schools, programs, or courses shall have the opportunity to participate in any required annual state assessments at the district of residence, subject to that district's planned testing schedule. It is the responsibility of the enrolling district to facilitate all necessary coordination with the district of residence and with the student and, where appropriate, the student's parent(s) or guardian to fulfill this requirement. Such coordination may include arranging for appropriate assessment booklets, student notification of assessment administration schedules, arrangements for forwarding of completed assessment booklets to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. Assessment results for students assessed according to these provisions shall be included in the enrolling district's accountability measurements, and not in the district of residence's accountability measurements.

(7) **Program evaluation:** School districts offering alternative learning experiences shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(8) **Annual reporting:** Each school district offering alternative learning experiences shall report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section, including student headcount and full-time equivalent enrollment claimed for basic education funding. The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(9) **Documentation:** In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (2)(g) of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection (8) of this section;

(d) The written student learning plans required by subsection (4) of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection (6) of this section;

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress; and

(g) Signed parent enrollment disclosure documents required by subsection (3)(e) of this section.

[Statutory Authority: RCW 28A.150.290 and 2005 c 356. 05-13-154, § 392-121-182, filed 6/21/05, effective 7/22/05. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-182, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 95-18-097, § 392-121-182, filed 9/6/95, effective 10/7/95; 95-01-013, § 392-121-182, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.150.290, 28A.150.250 and 28A.150.260. 91-02-096 (Order 50), § 392-121-182, filed 1/2/91, effective 2/2/91. Statutory Authority: RCW 28A.41.055 and 28A.41.170. 88-03-013 (Order 88-8), § 392-121-182, filed 1/11/88.]

**WAC 392-121-262 Definition—Additional criteria for all credits.** Credits earned after September 1, 1995, must satisfy the following criteria in addition to those found in WAC 392-121-255, 392-121-257, and 392-121-259:

(1) At the time credits are recognized by the school district the content of the course must meet at least one of the following:

(a) It is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) It pertains to the individual's current assignment or expected assignment for the following school year;

(c) It is necessary for obtaining endorsement as prescribed by the Washington professional educator standards board;

(d) It is specifically required for obtaining advanced levels of certification;

(e) It is included in a college or university degree program that pertains to the individual's current assignment or potential future assignment as a certificated instructional staff; or

(f) It addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff;

(2) Credits which have been determined to meet one or more of the criteria in subsection (1) of this section shall continue to be recognized in subsequent school years and by subsequent school district employers; and

(3) Credits not recognized in a school year may be recognized in a subsequent school year if there is a change in the qualifying criteria such as a change in state board of education rules, a change in the district's strategic plan, a change in the school-based plan for the school in which the individual is assigned, a change in the individual's assignment, or a change in the individual's employer.

[Statutory Authority: RCW 28A.150.290(1) and 28A.415.023. 05-22-008, § 392-121-262, filed 10/20/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1) and section 503 (1)(b) of the 2002 supplemental budget. 02-22-065, § 392-121-262, filed 11/1/02, effective 12/2/02. Statutory Authority: RCW 28A.150.290 and chapter 28A.415 RCW. 97-22-106 (Order 97-07), § 392-121-262, filed 11/5/97, effective 12/6/97. Statutory Authority: RCW 28A.150.290. 95-21-096 (Order 95-09), § 392-121-262, filed 10/18/95, effective 11/18/95.]

**WAC 392-121-465 Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program.** The pur-

pose of this section is to establish policies and procedures for the calculation and distribution of state incentive moneys to school districts increasing their enrollments in vocational skills centers.

(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term is defined in WAC 392-121-133(1).

(2) Enrollment used in this calculation shall be the AAFTE reported in the form and by the deadline required by the superintendent of public instruction.

(3) A district's state incentive grants for increased enrollment in vocational skills centers shall be calculated as follows:

(a) Determine the increase in the vocational skill center AAFTE of the resident district from the base year of 2004-05 to the current year;

(b) Multiply the number of students obtained in (a) of this subsection by the per pupil allocation established and subject to the limitations in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(c) The product is the district's annual incentive payment.

(4) The superintendent of public instruction shall apportion to districts for the state incentive grants for increased enrollment in vocational skills centers the amount calculated per district in this section in June of each year commencing June 2006.

[Statutory Authority: RCW 28A.150.290. 05-19-138, § 392-121-465, filed 9/21/05, effective 10/22/05.]

## Chapter 392-122 WAC

### FINANCE—CATEGORICAL APPORTIONMENT

#### WAC

392-122-145	State special education program—Home and/or hospital care—Extended absences.
392-122-205	State institutional education program—Eligible programs.
392-122-212	Definition—State institutional education program—Educational activity.

**WAC 392-122-145 State special education program—Home and/or hospital care—Extended absences.** Students eligible under WAC 392-172-218 temporarily requiring home and/or hospital care shall be counted as enrolled students pursuant to WAC 392-121-106 as follows:

(1) Students not deemed eligible special education students pursuant to WAC 392-122-135 whose absence from the regular attendance continues through two consecutive monthly enrollment report days shall be dropped from the rolls and shall not be counted as an enrolled student on the next monthly enrollment report day unless attendance has resumed. Such students shall only be eligible for home and/or hospital care allocations until attendance in the regular program is resumed.

(2) Students deemed eligible special education students pursuant to WAC 392-122-135 shall be reported as enrolled students for the duration of the home and/or hospital care.

[Statutory Authority: RCW 28A.150.290. 05-15-126, § 392-122-145, filed 7/18/05, effective 8/18/05; 96-03-002, § 392-122-145, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. 91-03-118 (Order 2), § 392-122-145, filed 1/23/91, effective 2/23/91.]

Statutory Authority: RCW 28A.41.170. 84-20-078 (Order 84-36), § 392-122-145, filed 10/2/84.]

**WAC 392-122-205 State institutional education program—Eligible programs.** Programs supported as state institutional education programs include those provided in:

(1) State operated group homes—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services to house adjudicated youth twenty-four hours a day;

(2) Juvenile detention centers—i.e., facilities meeting the definition of a "detention facility" in RCW 13.40.020.

(3) Institutions for juvenile delinquents—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services for the diagnosis, confinement and rehabilitation of juveniles committed by the courts.

(4) Residential habilitation centers—i.e., facilities maintained by the division of developmental disabilities of the department of social and health services for care and treatment of persons with exceptional needs by reason of mental and/or physical deficiency.

(5) Adult correctional facilities housing juveniles—i.e., facilities maintained by the state department of corrections for juvenile inmates under eighteen years of age.

[Statutory Authority: RCW 28A.150.290. 05-15-127, § 392-122-205, filed 7/18/05, effective 8/18/05; 01-24-002, § 392-122-205, filed 11/21/01, effective 12/22/01. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. 98-21-065 (Order 98-09), § 392-122-205, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. 95-08-025, § 392-122-205, filed 3/29/95, effective 4/29/95; 92-03-045 (Order 92-03), § 392-122-205, filed 1/10/92, effective 2/10/92. Statutory Authority: RCW 28A.41.170. 84-20-078 (Order 84-36), § 392-122-205, filed 10/2/84.]

**WAC 392-122-212 Definition—State institutional education program—Educational activity.** As used in WAC 392-122-200 through 392-122-275, "educational activity" means the following teaching/learning experiences provided by a school district or other education provider:

(1) Instruction, testing, counselling, supervision, advising, and other services provided directly by certificated staff or by classified staff who are supervised by certificated staff.

(2) Up to one hour per day of scheduled study time if the study is in conjunction with other educational activity and if the study is monitored by educational staff who are present during the study.

(3) Up to two hours per day of individual study conducted by a student when educational staff are not present if all of the following conditions are met:

(a) The study is in pursuit of high school graduation credit; or the study is in a department of corrections facility and is in pursuit of a certificate of educational competence pursuant to RCW 28B.50.536 and chapter 131-48 WAC;

(b) The study is part of a program of instruction defined by a certificated employee who evaluates the student's progress in that program;

(c) The student is making progress in the program;

(d) The study is not counted as work training experience pursuant to subsection (4) of this section; and

(e) Combined individual study time and scheduled study time pursuant to subsection (2) of this section claimed in



determining the student's full-time equivalent pursuant to WAC 392-122-225 do not exceed two hours per day.

(4) Work based learning meeting the requirements of WAC 180-50-315: Provided, That for work based learning provided pursuant to WAC 180-50-315, a student's full-time equivalent shall be determined pursuant to WAC 392-121-124.

[Statutory Authority: RCW 28A.150.290. 05-19-139, § 392-122-212, filed 9/21/05, effective 10/22/05. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. 98-21-065 (Order 98-09), § 392-122-212, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. 92-03-045 (Order 92-03), § 392-122-212, filed 1/10/92, effective 2/10/92.]

## Chapter 392-123 WAC

### FINANCE—SCHOOL DISTRICT BUDGETING

#### WAC

392-123-175 Proceeds from the lease, rental or occasional use of surplus property.

**WAC 392-123-175 Proceeds from the lease, rental or occasional use of surplus property.** Pursuant to RCW 28A.335.060 each school district's board of directors shall deposit moneys derived from the lease, rental or occasional use of surplus school property as follows:

(1) Moneys derived from real property shall be deposited into the district's debt service fund and/or capital projects fund except for:

(a) Moneys required to be expended for general maintenance, utility, insurance costs, and any other costs associated with the lease or rental of such property, which money shall be deposited in the district's general fund; or

(b) At the option of the board, after evaluating the sufficiency of the school district's capital projects fund for purposes of meeting demands for new construction and improvements, moneys derived from the lease or rental of real property may be deposited into the district's general fund to be used exclusively for nonrecurring costs related to operating school facilities, including, but not limited to, expenses for maintenance;

(2) Moneys derived from pupil transportation vehicles shall be deposited in the district's transportation vehicle fund;

(3) Moneys derived from other personal property shall be deposited in the district's general fund.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-178, § 392-123-175, filed 8/23/05, effective 9/23/05. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-123-175, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.65.465. 83-21-027 (Order 83-12), § 392-123-175, filed 10/10/83.]

## Chapter 392-125 WAC

### FINANCE—EDUCATIONAL SERVICE DISTRICT BUDGETING

#### WAC

392-125-010 Principles of accounting.  
 392-125-100 Interfund loans—Definition.  
 392-125-105 Interfund loans allowable.  
 392-125-110 Interfund loans—Identification of temporary loans.  
 392-125-120 Interfund loans—Payment of interest.  
 392-125-130 Interfund loans—Full disclosure on financial statements.  
 392-125-140 Interfund loans—Board resolution adopted—Contents.

**WAC 392-125-010 Principles of accounting.** In all cases, the budgeting and accounting systems of educational service districts shall be governed by generally accepted accounting principles modified where necessary by statute and/or this chapter. *The Accounting Manual for Educational Service Districts* shall govern the accounting system of educational service districts and is hereby incorporated into this chapter by this reference. Prior to any revision thereof, the superintendent of public instruction shall publish notice of such proposed action and shall hold at least one public hearing.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-010, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.21.135. 81-19-007 (Order 81-19), § 392-125-010, filed 9/4/81; Order 8-76, § 392-125-010, filed 7/23/76; Order 7-75, § 392-125-010, filed 12/22/75. Formerly WAC 392-31-020.]

**WAC 392-125-100 Interfund loans—Definition.** An interfund loan is considered to be a temporary loan of moneys between one educational service district fund and another. An interfund loan is not considered to be an investment.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-100, filed 8/23/05, effective 9/23/05.]

**WAC 392-125-105 Interfund loans allowable.** Loans are allowable to the general expense fund and the enterprise fund. Loans shall not be made to the detriment of any function or project for which the fund was established.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-105, filed 8/23/05, effective 9/23/05.]

**WAC 392-125-110 Interfund loans—Identification of temporary loans.** A temporary loan is considered to be a loan which is completely liquidated in less than one year.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-110, filed 8/23/05, effective 9/23/05.]

**WAC 392-125-120 Interfund loans—Payment of interest.** Interest shall be charged by the loaning fund to be paid by the borrowing fund. The rate of interest shall be not less than the current warrant interest rate prevailing in the county in which the educational service district is considered to be located. The interest shall be credited to the loaning fund and shall not be transferred to any other fund.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-120, filed 8/23/05, effective 9/23/05.]

**WAC 392-125-130 Interfund loans—Full disclosure on financial statements.** Financial reports of each educational service district, including the monthly financial reports provided to the board of directors of the educational service district, shall specify all outstanding interfund loans and all interest charges involved. The proceeds of any interfund loan shall not be used to balance the budget of the borrowing fund.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-130, filed 8/23/05, effective 9/23/05.]

**WAC 392-125-140 Interfund loans—Board resolution adopted—Contents.** The board of directors of an educational service district shall adopt a resolution before any interfund loan transaction may take place. The resolution

shall contain the exact amount of the loan, the funds involved, the specific source of funds for repayment, the schedule for repayment, and the interest rate involved.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-177, § 392-125-140, filed 8/23/05, effective 9/23/05.]

## Chapter 392-126 WAC

### FINANCE

#### WAC

392-126-006	Purpose.
392-126-009	Definition—Program.
392-126-026	Definition—Service in the uniformed services.
392-126-027	Definition—Uniformed services.
392-126-085	Donation of sick leave.
392-126-095	Documentation.

**WAC 392-126-006 Purpose.** The purpose of this chapter is to set forth policies and procedures for the operation of a permissive shared leave program in school districts and educational service districts which permits employees to donate annual leave, sick leave, or personal holiday to a fellow employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition, or who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-176, § 392-126-006, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.400.380 and 41.04.650 through 41.04.665. 98-24-043 (Order 98-11), § 392-126-006, filed 11/24/98, effective 12/25/98. Statutory Authority: RCW 28A.58.095. 90-17-110 (Order 25), § 392-126-006, filed 8/21/90, effective 9/21/90.]

**WAC 392-126-009 Definition—Program.** "Program" means the leave sharing program established in RCW 41.04.660.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-176, § 392-126-009, filed 8/23/05, effective 9/23/05.]

**WAC 392-126-026 Definition—Service in the uniformed services.** "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-176, § 392-126-026, filed 8/23/05, effective 9/23/05.]

**WAC 392-126-027 Definition—Uniformed services.** "Uniformed services" means the armed forces, the Army National Guard, and the Air National Guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time National Guard duty, or state active duty, the commissioned corps of the Public Health Service, the Coast Guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-176, § 392-126-027, filed 8/23/05, effective 9/23/05.]

[2006 WAC Supp—page 1766]

**WAC 392-126-085 Donation of sick leave.** An employee may donate sick leave to specific individuals or pool using the following criteria:

(1) The employee must have accrued more than twenty-two days of sick leave.

(2) Employees may not donate an amount of sick leave that will result in his or her sick leave account going below twenty-two days.

(3) All donated sick leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating sick leave.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-176, § 392-126-085, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.400.380 and 41.04.650 through 41.04.665. 98-24-043 (Order 98-11), § 392-126-085, filed 11/24/98, effective 12/25/98. Statutory Authority: RCW 28A.58.095. 90-17-110 (Order 25), § 392-126-085, filed 8/21/90, effective 9/21/90.]

**WAC 392-126-095 Documentation.** The district shall require the employee or his or her legal representative, to submit, prior to approval or disapproval, documentation from a licensed physician or other authorized health care practitioner verifying the severe or extraordinary nature and expected duration of the condition, or orders verifying the employee has been called to service in the uniformed services.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-176, § 392-126-095, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.58.095. 90-17-110 (Order 25), § 392-126-095, filed 8/21/90, effective 9/21/90.]

## Chapter 392-136 WAC

### FINANCE—CONVERSION OF ACCUMULATED SICK LEAVE

#### WAC

392-136-020	Conversion of sick leave upon separation from district employment.
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**WAC 392-136-020 Conversion of sick leave upon separation from district employment.** (1) Eligible employees: Upon separation from district employment the following employees may personally, or through their estate in the event of death, elect to convert all eligible, accumulated, unused sick leave up to a maximum of one hundred eighty days to monetary compensation as provided in this section:

(a) Eligible educational service district employees are those who terminate employment with the educational service district due to either retirement or death.

(b) Eligible school district employees are those who qualify under an attendance incentive program established by the school district board of directors pursuant to WAC 392-136-065 and who:

(i) Separate from employment with the school district due to death or retirement; or

(ii) After June 7, 2000, separate from employment with the school district and are at least age fifty-five and:

(A) Have at least ten years of service under teachers' retirement plan 3 as defined in RCW 41.32.010(40), or under the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010(31); or

(B) Have at least fifteen years of service under teachers' retirement system plan 2 as defined in RCW 41.32.010(39), under Washington school employees' retirement system plan 2 as defined in RCW 41.35.010(30), or under public employ-

ees' retirement system plan 2 as defined in RCW 41.40.010 (34).

(c) In order to receive reimbursement for unused sick leave, by virtue of retirement pursuant to subsection (1)(a) or (1)(b)(i) of this section the employee must have separated from such employment and have been granted a retirement allowance under the laws governing the teachers' retirement system, the public employees' retirement system, or the school employees' retirement system whichever applies; however, it is not necessary that the employee actually file for retirement prior to the date of his or her separation so long as the application is thereafter filed within a reasonable period of time and without the occurrence of any intervening covered employment.

(d) Eligible school district employees who qualify under an attendance incentive program established by the school district board of directors pursuant to WAC 392-136-065 and who have previously separated from a school district due to retirement may cash out subsequent earned sick leave under the following exceptions:

(i) The employee ceases receipt of retirement benefits and reestablishes membership in the retirement system, including resuming payments into the system; or

(ii) The employee establishes, and makes payment into, a second retirement system from which they may subsequently retire.

(2) Eligible sick leave days include all unused sick leave days that have been accumulated from year to year up to a maximum of the number of contracted days agreed to in a given contract, but not greater than one year, by an eligible employee, less sick leave days previously converted pursuant to WAC 392-136-015 and those credited as service rendered for retirement purposes.

(3) Rate of conversion: Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of twenty-five percent of an employee's full-time daily rate of compensation at the time of termination of employment for each full day of eligible sick leave. Partial days of eligible sick leave shall be converted on a pro rata basis.

(4) Deduction of converted days: All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(5) Exclusion from retirement allowance: Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

[Statutory Authority: Chapter 28A.150 RCW. 05-17-175, § 392-136-020, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.400.210. 01-11-098, § 392-136-020, filed 5/18/01, effective 6/18/01. Statutory Authority: RCW 28A.21.360 and 28A.58.096. 84-04-034 (Order 84-2), § 392-136-020, filed 1/26/84. Statutory Authority: RCW 28A.58.100(2). 82-16-038 (Order 82-8), § 392-136-020, filed 7/28/82. Statutory Authority: 1980 c 182 §§ 5 and 6. 80-12-029 (Order 80-23), § 392-136-020, filed 8/28/80.]

### Chapter 392-140 WAC

### FINANCE—SPECIAL ALLOCATIONS, INSTRUCTIONS, AND REQUIREMENTS

#### WAC

392-140-600 Special education safety net—Applicable provisions.

392-140-60105	Definition—High need student.
392-140-602	Special education safety net—Eligible applicants.
392-140-605	Special education safety net—Application type, certification, worksheets.
392-140-609	Special education safety net—Standards and criteria—Appropriate and properly and efficiently prepared and formulated IEPs.
392-140-616	Special education safety net—Standards—High need student applications.
392-140-626	Special education safety net—Worksheet A—Demonstration of need.
392-140-640	Special education safety net—State oversight committee—Membership, structure.
392-140-643	Special education safety net—Definition—State oversight committee—Procedures.
392-140-646	Special education safety net—State oversight committee actions.
392-140-660	Special education safety net—Approved application—Special education safety net allocations.
392-140-675	Special education safety net—Adjustments to special education safety net allocations.
392-140-685	Special education safety net—Recovery of state and/or federal allocations to school districts.
392-140-903	K-4 Staff enhancement—Definitions.
392-140-904	K-4 Staff enhancement—School district reporting.
392-140-912	K-4 Staff enhancement—Determination of K-4 apportionment ratios.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-140-905	K-4 Staff enhancement—Determination of the K-4 staff ratio equivalent of K-6 basic education supplemental contracts for extended learning opportunities. [Statutory Authority: RCW 28A.150.290(2) and 2001 2nd sp.s. c 7 § 502 (2)(a)(v). 02-09-024, § 392-140-905, filed 4/8/02, effective 5/9/02. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 502 (2)(a)(iii). 00-02-063, § 392-140-905, filed 1/3/00, effective 2/3/00.] Repealed by 05-17-179, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.150.290(1) and 2004 c 276 § 502 (2)(a).
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**WAC 392-140-600 Special education safety net—Applicable provisions.** The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of safety net allocations of Individuals with Disabilities Education Act (IDEA) federal funds for the 2005-06 school year and thereafter.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-600, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-600, filed 4/6/04, effective 5/7/04; 03-02-053, § 392-140-600, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 01-04-023, § 392-140-600, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-600, filed 1/7/00, effective 2/7/00. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-600, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-60105 Definition—High need student.** A student with a disability whose program cost is greater than three times the statewide average per pupil expenditures as defined in section 9101 of the Elementary and Secondary Education Act of 1965 or a multiple of the statewide average per pupil expenditures as established by the superintendent of public instruction and published in the *Safety Net Bulletin* shall be considered a high need student for purposes of this chapter.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-60105, filed 12/9/05, effective 1/9/06.]

**WAC 392-140-602 Special education safety net—Eligible applicants.** (1) An individual school district of the state of Washington is eligible to apply for special education safety net moneys on behalf of its resident students. Resident students include those defined as resident pursuant to WAC 392-137-115, those enrolled through choice (RCW 28A.225-.225) and those from nonhigh districts (RCW 28A.225.210). Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative of at least fifteen districts in which all excess cost services for special education students of the districts are provided by the cooperative is eligible to apply for special education safety net moneys. The cooperative and the participating school districts shall be treated as a single school district for the purposes of this chapter. Participating school districts are not eligible to apply for safety net moneys individually.

(3) The Washington school for the deaf and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-602, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-602, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-602, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-605 Special education safety net—Application type, certification, worksheets.** Application for safety net funding shall be made on Form SPI 1381 - Certification published by the superintendent of public instruction as follows:

(1) School districts may make application for safety net funding for high need student(s). The school district making application for safety net funding shall certify that:

(a) The district recognizes that differences in costs attributable to district philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards.

(b) The application complies with the respective safety net application standards of WAC 392-140-616;

(c) The application provides true and complete information to the best of the school district's knowledge;

(d) The district understands that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the award letter, and certifies that federal Medicaid has been billed for all services to eligible students;

(e) The district is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding;

(f) The district's special education services are operated in a reasonably efficient manner;

(g) Indirect costs included for purposes of determining safety net allocations do not exceed the allowable percent for federal special education program plus one percent;

(h) Any available state and federal funding is insufficient to address the additional needs;

(i) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP; and

(j) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by an IEP.

(2) Worksheet A shall be included with the application and must demonstrate the need for safety net funding. Worksheet A is used to determine a maximum amount of eligibility for a school district. Award amounts may be less than the maximum amount of eligibility determined on Worksheet A. School districts are encouraged and may be required to submit additional information designed to assist the state oversight committee in analyzing the application.

(3) All high need student applications shall include worksheets "A" and "C" and summary published in the safety net application, and certification of standards and criteria pursuant to WAC 392-140-616.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-605, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-605, filed 4/6/04, effective 5/7/04; 03-02-053, § 392-140-605, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 02-05-036, § 392-140-605, filed 2/12/02, effective 2/13/02; 01-04-023, § 392-140-605, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-605, filed 1/7/00, effective 2/7/00. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-605, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-605, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-609 Special education safety net—Standards and criteria—Appropriate and properly and efficiently prepared and formulated IEPs.** Individualized education programs (IEPs) which are appropriate, properly and efficiently prepared and formulated are those IEPs that meet all of the following criteria:

(1) The IEPs comply with federal and state procedural requirements.

(2) The delivery of specially designed instruction identified on the IEP complies with state and federal requirements (regularly scheduled teaching or training activities provided or designed by special education qualified staff).

(3) The provision of special education services conforms with areas of need identified in the student's evaluation and/or reevaluation made pursuant to chapter 392-172 WAC.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-609, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-609, filed 4/6/04, effective 5/7/04; 03-02-053, § 392-140-609, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 02-05-036, § 392-140-609, filed 2/12/02, effective 2/13/02; 01-04-023, § 392-140-609, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-609, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-616 Special education safety net—Standards—High need student applications.** For districts requesting safety net funding to meet the extraordinary needs of an eligible high need special education student, the district shall demonstrate at a minimum that:

(1) The IEP for the eligible special education student is appropriate, and properly and efficiently prepared and formulated.

(2) All of the following criteria apply to the high need student:

(a) Costs eligible for safety net consideration must be associated with providing direct special education and related services identified in the IEP.

(b) In order to deliver appropriate special education and related services to the student, the district must be providing services which incur costs exceeding:

(i) The annual threshold as established by the office of superintendent of public instruction for state funding; then

(ii) Three times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) for the state of Washington for federal funding. Threshold amounts shall be adjusted pro rata for students not counted or expected to be counted for special education services on all eight enrollment count dates (October through May). For example, for a student served and reported for only six of the eight count dates, the threshold amount shall be reduced to three-quarters of the full amount.

(c) The total cost of educational services must exceed any carryover of federal flow-through special education funding as of August 31 of the prior school year.

(3) The state safety net oversight committee shall adapt the high need student application as appropriate for applications prepared by the Washington state school for the blind and the Washington school for the deaf.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-616, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 03-02-053, § 392-140-616, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 02-05-036, § 392-140-616, filed 2/12/02, effective 2/13/02; 01-04-023, § 392-140-616, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-616, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-616, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need.** Applications for high need students shall demonstrate district financial need as follows:

(1) Application worksheet "A" shall demonstrate a fiscal need in excess of:

(a) Any previous safety net awards for the current school year; and

(b) All available revenue for special education, including all carryover of state and federal special education revenue.

(2) Awards shall not exceed the amount of need demonstrated on the worksheet "A."

(3) Worksheets submitted with safety net applications are to reflect the state adopted excess cost method of accounting, consistently applied for both years presented.

(4) The safety net oversight committee may revise the district's worksheet "A" submitted for errors or omissions or more current information.

(5) The school district shall provide clarifying information as requested by the state oversight committee.

(6) After the close of the school year, the safety net oversight committee may review the worksheet "A" used to deter-

mine need for a district's award against the actual final school year enrollments, revenues, and expenditures reported by the district. Based upon the results of this review:

(a) The safety net allocation for the school year may be adjusted or recovered; or

(b) If the committee finds that a portion of the safety net allocation was not needed to balance revenues and expenditures, the committee may consider that portion of the allocation available to meet the needs of the ensuing school year.

(7) The state safety net oversight committee shall adapt the worksheet "A" - Demonstration of Need as appropriate for applications prepared by districts participating in the pilot program according to the provisions of RCW 28A.630.015 (4).

(8) In accordance with the state of Washington *Accounting Manual for Public School Districts* and statutory federal language, demonstrated need shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free appropriated public education.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-626, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-626, filed 4/6/04, effective 5/7/04; 03-02-053, § 392-140-626, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 01-04-023, § 392-140-626, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-626, filed 1/7/00, effective 2/7/00.]

**WAC 392-140-640 Special education safety net—State oversight committee—Membership, structure.** Membership of the state oversight committee shall consist of: Staff of the office of superintendent of public instruction, staff of the office of state auditor who shall be nonvoting, one or more representatives from a school district(s), and one or more representatives from an educational service district.

(1) The state oversight committee members will be appointed by the office of superintendent of public instruction.

(2) The state director of special education shall serve as an ex officio, nonvoting committee member and act as the state oversight committee manager.

(3) Members of the state oversight committee from school districts and/or educational service districts will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of district(s) served, and other demographic considerations which will guarantee a representative state committee.

(4) Alternate members shall be appointed. In the event a member is unable to attend a committee meeting, an alternate member shall attend.

(5) Membership appointments shall be made for a period of one year. The oversight committee manager may replace a portion of the committee each year in order to enhance representation.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-640, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-640, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-640, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-640, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures.** (1) The state oversight committee will review applications as deemed necessary by the superintendent of public instruction pursuant to WAC 392-140-608.

(2) All applications received by the state oversight committee will be reviewed for completeness by the state oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the instruction bulletin published by the superintendent of public instruction. If applications are not complete, they will not be considered by the committee.

(3) The state oversight committee manager will forward to the committee members copies of the applications in a timely manner.

(4) The state oversight committee manager or designee will be responsible for presenting each application for consideration to the committee.

(5) Committee members shall review and discuss the application content for completeness, accuracy, and understanding of the reason(s) for the applicant's need for safety net funding.

(6) The committee may request that a submitting school district provide clarifying information.

(7) Committee members will individually indicate their agreement, disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

(8) A majority vote by the committee members will be sufficient to determine the committee action.

(9) The state oversight committee manager will ensure that notes are taken which summarize the questions and discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments recommended by the committee, the amount of any award to be made, and the reasons for and against the action taken by the committee.

(10) Committee members shall each sign the decision summary.

(11) The state oversight committee manager, on behalf of the committee, will notify the applicant school district in writing of the determination of the committee. The school district will be provided a copy of the decision summary.

(12) All applications received by the state oversight committee will be retained by the superintendent of public instruction for use in the evaluation of the safety net funding process and to provide the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-643, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-643, filed 4/6/04, effective 5/7/04; 03-02-053, § 392-140-643, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-643, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-646 Special education safety net—State oversight committee actions.** The state oversight committee shall take the following actions:

(1) After the state oversight committee determines:

(a) There are no unresolved audit examination issues related to special education that are material in nature;

(b) There are no unresolved child count verification issues which are material in nature; and

(c) All corrections to state enrollment reporting, required for resolution of (a) and (b) of this subsection, are completed.

(2) An application reviewed during an application cycle may be:

(a) Approved;

(b) Disapproved; or

(c) Returned to the submitting school district, for possible resubmission at a later date during the school year, because information contained in the application is insufficient to establish a need for safety net funding.

(3) The amount approved shall be equal to or less than the amount for which application was made.

(4) The approval may be contingent on additional requirements imposed by the committee such as development of an action plan to resolve a specified problem prior to submission of any future safety net application to assure school district compliance with the criteria and standards set forth in these safety net regulations.

(5) The approvals are subject to adjustment and recovery pursuant to WAC 392-140-675 through 392-140-685.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-646, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-646, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-646, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-660 Special education safety net—Approved application—Special education safety net allocations.** (1) The special education safety net allocation for an individual district shall be the smaller of:

(a) The amount requested by the school district; or

(b) The amount authorized by the state oversight committee.

(2) Special education safety net allocations for high need students under WAC 392-140-605 (1) shall use appropriated federal moneys. If safety net awards to meet the extraordinary needs of one or more individual special education students exceed the general fund—federal appropriation, the superintendent shall expend all available and otherwise uncommitted federal discretionary funds necessary to meet this need.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-660, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 03-02-053, § 392-140-660, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 01-04-023, § 392-140-660, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-660, filed 1/7/00, effective 2/7/00. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-660, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-660, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-675 Special education safety net—Adjustments to special education safety net allocations.** Safety net allocations may be adjusted as follows:

(1) For those districts not maximizing Medicaid billing for special education students under RCW 74.09.5255, special education safety net allocations shall be reduced by the estimated potential additional incentive payments for the

school year if the district maximized Medicaid incentive payments. Potential additional incentive payments shall be estimated by the superintendent of public instruction based on the district's percent of Medicaid eligible students billed and a statewide average incentive payment per student determined by the superintendent in October of the school year. The average incentive payment per student shall be determined using the prior school year's statewide Medicaid billing data assuming fifty percent incentive payments for all school districts. The superintendent of public instruction shall update Medicaid billing adjustments to safety net allocations periodically during the school year and again in January following the close of the school year.

(2) Special education safety net allocations for a school district may be adjusted to reflect changes in factors for which additional or revised information becomes available after the awarding of the initial safety net allocation. This means:

(a) High need awards may be reduced or nullified when the school district's actual revenues and expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(b) A school district's safety net award may be adjusted by the safety net oversight committee based on the results of the review conducted by the special education program audit team pursuant to WAC 392-140-630.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-675, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 03-02-053, § 392-140-675, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 01-04-023, § 392-140-675, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-675, filed 1/7/00, effective 2/7/00. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-675, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-675, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-685 Special education safety net—Recovery of state and/or federal allocations to school districts.** High need student state and/or federal special education safety net allocations:

(1) Shall be recovered or awards reduced for the following reasons:

(a) The application contains a falsification or deliberate misrepresentation, including omission of a material fact.

(b) The allocation is unexpended for the purpose allocated including but not limited to situations where the student leaves the district or has a change in services. For students who transfer to another Washington public school district, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district transfers the equipment to the other school district.

(c) The IEP is determined at a later date, through state audit or child count verification, to be inappropriate or improperly prepared and appropriate and proper preparation would materially affect the justification or amount of need for safety net funding.

(2) May be recovered or awards reduced for the following reasons:

(a) The school district has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(b) The district's actual revenues are significantly higher than estimated revenues on which the award was based or the district's actual expenditures are significantly lower than the estimated expenditures on which the award was based.

(c) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

Recovery adjustments not made in the current school year shall be added to the amount calculated pursuant to WAC 392-140-616 (2)(c) for the following school year. Such amounts reduce state and/or federal safety net awards in the following year.

[Statutory Authority: RCW 28A.150.290. 06-01-017, § 392-140-685, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-685, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-685, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-903 K-4 Staff enhancement—Definitions.** As used in WAC 392-140-900 through 392-140-913:

(1) "Report S-275" means the school district personnel report as defined in WAC 392-121-225.

(2) "Form SPI 1158" means the form provided by the superintendent of public instruction on which school districts report a net change in K-12 full-time equivalent (FTE) staff and/or K-4 FTE staff after October 1.

(3) "Report 1159" means the report produced by the superintendent of public instruction displaying the calculations of K-4 certificated instructional staffing and K-4 apportionment ratios and other information as necessary.

(4) "Form SPI 1160" means the form provided by the superintendent of public instruction on which school districts may select the period of enrollment the superintendent of public instruction shall use to calculate staffing ratios.

(5) "Form SPI 1230" means the form provided by the superintendent of public instruction on which school districts had the option of reporting 1989-90 FTE K-3 basic education classified instructional assistants before September 1, 1999.

(6) "Form SPI 1230K-4" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-4 basic education classified instructional assistants after September 1, 1999.

(7) "FTE K-4 basic education enrollment" means the school district's K-4 full-time equivalent enrollment reported for basic education funding pursuant to WAC 392-121-122 for the month of October or such other period selected by the district on optional Form SPI 1160.

(8) "FTE basic education certificated instructional employee" means the FTE calculated pursuant to WAC 392-121-215 for a basic education certificated instructional employee assigned in whole or in part to the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

(a) Basic education, program 01;

(b) Vocational, basic, state, program 31;

(c) Skills center, basic, state, program 45; and

(d) District-wide support, program 97.

(9) "FTE K-4 basic education certificated instructional employee" means for a FTE basic education certificated instructional employee the following:

(a) If the basic education certificated instructional employee serves only K-4 students, one hundred percent of the FTE assigned to basic education; or

(b) If the basic education certificated instructional employee serves K-4 students and students of one or more other grades, multiply the FTE assigned to basic education by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (i) or (ii) of this subsection as appropriate.

(10) "FTE K-4 basic education certificated instructional staff" means the sum of FTE K-4 basic education certificated instructional employees for a school district.

(11) "Basic education classified instructional assistant" means a person who is assigned in whole or in part to:

(a) Program 01 - basic education; 31 - vocational, basic, state; or 45 - skills center, basic, state; and

(b) Activity 27 - teaching; and

(c) Duty 910 - aide.

(12) "Basic education classified instructional assistant FTE" means the number determined for a basic education classified instructional assistant as follows:

(a) Determine the hours per year that the employee is assigned as a basic education classified instructional assistant; and

(b) Divide by 2080.

(13) "District FTE K-4 basic education classified instructional assistants" means the sum of a school district's FTE K-4 basic education classified instructional assistants.

(a) If the basic education classified instructional assistant serves only K-4 students, one hundred percent of the FTE determined pursuant to subsection (12) of this section.

(b) If the basic education classified instructional assistant serves K-4 students and students of one or more other grades, multiply the FTE determined pursuant to subsection (12) of this section by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (b)(i) or (ii) of this subsection as appropriate.

(14) "Actual average salary for basic education classified instructional assistants" means the dollar amount determined for a school district for a school year as follows:

(a) For each basic education certificated instructional assistant reported on Report S-275 determine the assignment salary reported;

(b) Sum the dollar amounts determined pursuant to (a) of this subsection; and

(c) Divide the result of (b) of this subsection by the sum of the school district's FTE basic education classified instructional assistants as reported on Report S-275.

[Statutory Authority: RCW 28A.150.290(1) and 2004 c 276 § 502 (2)(a). 05-17-179, § 392-140-903, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.150.290(2) and 2001 2nd sp.s. c 7 § 502 (2)(a)(v). 02-09-024, § 392-140-903, filed 4/8/02, effective 5/9/02. Statutory Authority: RCW 28A.150.290 [28A.150.290], 28A.505.140. 01-08-048, § 392-140-903, filed 3/30/01, effective 4/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 502 (2)(a)(iii). 00-02-063, § 392-140-903, filed 1/3/00, effective 2/3/00.]

**WAC 392-140-904 K-4 Staff enhancement—School district reporting.** School districts shall report staff information to the superintendent of public instruction as follows:

(1) Required Report S-275. School districts shall report K-4 basic education certificated instructional staff and K-4 basic education classified instructional assistants employed as of October 1 of the school year on Report S-275 pursuant to instructions provided by the superintendent of public instruction.

(2) Optional Form SPI 1158. School districts may use this form to report net changes in K-4 basic education certificated instructional staff or in K-4 basic education classified instructional assistants after October 1 determined as follows:

(a) Determine the base contract K-4 basic education FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the base contract K-4 basic education FTE as of October 1 actually reported for the employee on the school district's most current Report S-275.

(b) Include decreases as well as increases in FTE staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

(3) Optional Form SPI 1160. School districts may use this form to select an enrollment period other than October:

(a) Enrollment for any month of the school year; or

(b) Annual average enrollment for the school year.

(4) Optional Form SPI 1230 K-4. School districts may use this form to report 1989-90 FTE K-4 classified instructional assistants. This is a one-time form. Once filed, the information from this form is used for all subsequent years unless revised by the district.

(5) Optional report forms for a school year must be filed with the superintendent of public instruction by September 30 following the close of the school year.

[Statutory Authority: RCW 28A.150.290(1) and 2004 c 276 § 502 (2)(a). 05-17-179, § 392-140-904, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.150.290(2) and 2001 2nd sp.s. c 7 § 502 (2)(a)(v). 02-09-024, § 392-140-904, filed 4/8/02, effective 5/9/02.]

**WAC 392-140-912 K-4 Staff enhancement—Determination of K-4 apportionment ratios.** The superintendent of public instruction shall determine each school district's ratio of state allocated certificated instructional staff units per one thousand K-4 students for state basic education apportionment as follows:

(1) For the months of September through December, the superintendent shall use the district's estimated K-4 ratio as submitted on Report F-203 Estimates of State Revenue, or as submitted on a letter to the superintendent after submission of Report F-203.

(2) Beginning with the January apportionment payment and each month thereafter, the superintendent shall calculate



the district's K-4 apportionment ratio as the greater of (a) or (b) of this subsection:

(a) The district's minimum state-funded K-4 staffing ratio, using FTE enrollment for state apportionment, and calculated as follows:

(i) Sum the district's K-3 FTE enrollment times 0.049 and the district's fourth grade FTE enrollment times 0.046;

(ii) Divide the result of (a)(i) of this subsection by the district total K-4 FTE enrollment;

(iii) Multiply the result of (a)(ii) of this subsection by 1000.

(b) The lesser of:

(i) 53.2; or

(ii) The sum of the following:

(A) The district's K-4 certificated instructional staff ratio pursuant to WAC 392-140-910; and

(B) If the district's K-4 basic education certificated instructional staff ratio is 51.00 or greater, the lesser of 1.3 or the district's K-4 certificated staff ratio equivalent of the increased K-4 classified instructional assistants pursuant to WAC 392-140-908 if applicable, otherwise zero.

[Statutory Authority: RCW 28A.150.290(1) and 2004 c 276 § 502 (2)(a). 05-17-179, § 392-140-912, filed 8/23/05, effective 9/23/05. Statutory Authority: RCW 28A.150.290(1) and section 502 (2)(a) of ESSB 6387. 03-03-001, § 392-140-912, filed 1/2/03, effective 2/2/03. Statutory Authority: RCW 28A.150.290(2) and 2001 2nd sp.s. c 7 § 502 (2)(a)(v). 02-09-024, § 392-140-912, filed 4/8/02, effective 5/9/02. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 502 (2)(a)(iii). 00-02-063, § 392-140-912, filed 1/3/00, effective 2/3/00.]

## Chapter 392-142 WAC

### TRANSPORTATION—REPLACEMENT AND DEPRECIATION ALLOCATION

#### WAC

392-142-171	Definition—System price.
392-142-172	Definition—Average price.
392-142-174	Definition—Weighting factor.
392-142-176	Definition—2005 weighted price.
392-142-178	Definition—2006 weighted price.
392-142-185	Definition—Assumed interest earnings.
392-142-213	Purchase of school buses by school districts.
392-142-225	Placement of used school buses on state replacement or depreciation schedules.
392-142-231	Calculation of system price.
392-142-240	Calculation of annual state replacement payment for district-owned school buses.
392-142-245	Calculation of annual state depreciation payment for contractor-owned school buses.
392-142-250	Allocation of state replacement or depreciation payment.
392-142-255	Deposit of payments in transportation vehicle fund.
392-142-265	Maintenance and operation.

**WAC 392-142-171 Definition—System price.** The system price of an individual school bus is the price used to calculate the replacement system payment in a given school year.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-171, filed 9/16/05, effective 10/17/05.]

**WAC 392-142-172 Definition—Average price.** The average price for an individual school bus is calculated by adding the current year state-determined purchase price to the total of the previous four years' state-determined purchase prices and dividing by five. School bus categories no longer available or no longer supported use the historic prices for

those categories in years when such bus categories were available or supported.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-172, filed 9/16/05, effective 10/17/05.]

#### **WAC 392-142-174 Definition—Weighting factor.**

The weighting factor for an individual school bus is calculated by subtracting the 2005 average price from the 2005 state-determined purchase price and dividing by two.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-174, filed 9/16/05, effective 10/17/05.]

#### **WAC 392-142-176 Definition—2005 weighted price.**

The 2005 weighted price for an individual school bus is calculated by adding the weighting factor to the 2005 average price.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-176, filed 9/16/05, effective 10/17/05.]

#### **WAC 392-142-178 Definition—2006 weighted price.**

The 2006 weighted price for an individual school bus is calculated by adding one half the weighting factor to the 2005 system price.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-178, filed 9/16/05, effective 10/17/05.]

**WAC 392-142-185 Definition—Assumed interest earnings.** As used in this chapter, "assumed interest earnings" means the sum of interest which is assumed to be earned on moneys assumed to be available in the transportation vehicle fund from state payments and accumulated interest earnings. The rate used shall be the average of the treasury bill rate for ninety-day notes during the previous state fiscal year calculated on the basis of simple interest.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-185, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-185, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-185, filed 1/2/90, effective 2/2/90.]

**WAC 392-142-213 Purchase of school buses by school districts.** (1) School districts may purchase school buses directly from any school bus dealer who has provided an accepted price quote in each school bus category without regard to RCW 28A.335.190.

(2) School districts that do not purchase school buses in accordance with subsection (1) of this section may conduct their own competitive bid process in accordance with RCW 28A.335.190. School districts that choose to conduct their own bid shall:

(a) Use vendor bid proposal forms provided by the superintendent of public instruction.

(b) Prepare a summary of all bids received for retention in school district files and submission to the superintendent of public instruction.

(3) School buses which have been acquired by school districts or educational service districts, in accordance with subsection (1) or (2) of this section, are entitled to reimbursement payments for school bus replacement in accordance with this chapter.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-213, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-213, filed 6/12/03, effective 7/13/03.]

time 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-213, filed 8/4/95, effective 9/4/95.]

**WAC 392-142-225 Placement of used school buses on state replacement or depreciation schedules.** A used school bus shall be placed on the state replacement or depreciation schedule as if it had been issued a school bus operation permit on the first of September in the year of manufacture, including an estimate by the superintendent of public instruction of:

- (1) Prior school years total state replacement or depreciation payments;
- (2) Assumed interest earnings (if purchased by a school district); and
- (3) Salvage value (if purchased by a school district).

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-225, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-225, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-225, filed 1/2/90, effective 2/2/90.]

**WAC 392-142-231 Calculation of system price.** The system price of a school bus shall be calculated as following:

(1) For the 2005-06 school year, the system price for an individual school bus shall be determined by selecting the first condition that applies, as follows:

(a) If a school bus is in its final year on the replacement system, the system price is the state-determined purchase price.

(b) If the average price for the school bus is greater or equal to the 2004 or the 2005 state-determined purchase price, the system price is the average price.

(c) If the average price for the school bus is less than the 2004 state-determined purchase price, the system price is the 2005 weighted price.

(d) If the 2005 weighted price for the school bus is less than the 2004 actual price, the system price is the 2004 actual price.

(2) For the 2006-07 school year, the system price for an individual school bus shall be determined by selecting the first statement that applies, as follows:

(a) If a school bus is in its final year on the replacement system, the system price is the actual price.

(b) If the 2005 system price for the bus was the 2005 average price, the 2006 system price is the 2006 average price.

(c) If the 2006 average price for the school bus is greater or equal to the 2005 system price, the system price is the 2006 average price.

(d) If the 2006 average price for the school bus is less than the 2005 system price, the system price is the 2006 weighted price.

(3) Effective September 1, 2007, the system price for an individual school bus is the state-determined purchase price if a school bus is in its final year on the replacement system. For a school bus not in its final year on the replacement system, the system price is the average price.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-231, filed 9/16/05, effective 10/17/05.]

**WAC 392-142-240 Calculation of annual state replacement payment for district-owned school buses.** The superintendent of public instruction shall calculate each school district's annual state replacement payment for district-owned school buses as follows:

(1) For district-owned school buses issued a school bus operation permit prior to the fifteenth of any month of the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the system price by the useful lifetime in months as determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For school buses issued a school bus operation permit prior to the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the system price by the useful lifetime in months determined in (a) of this subsection;

(c) Multiply the result obtained in (b) of this subsection by the total number of months the school bus has been on the replacement schedule including the months for the current school year;

(d) Subtract from the result obtained in (c) of this subsection the total school bus replacement payments made in prior school years;

(e) Subtract from the result obtained in (c) of this subsection the assumed interest earnings; and

(f) Subtract from the result obtained in (e) of this subsection the salvage value of the school bus if the current school year is the final year of the vehicle's useful life.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-240, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-240, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-240, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.150.290 and 28A.160-130-200. 93-13-083 (Order 93-10), § 392-142-240, filed 6/18/93, effective 7/19/93. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-240, filed 1/2/90, effective 2/2/90.]

**WAC 392-142-245 Calculation of annual state depreciation payment for contractor-owned school buses.** The superintendent of public instruction shall calculate each school district's state depreciation payment for contractor-owned school buses as follows:

(1) For contractor-owned school buses issued a school bus operation permit prior to the fifteenth of the month of the current school year:

(a) Place each bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state determined purchase price by the useful lifetime in months determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For contractor-owned school buses issued a school bus operation permit in a prior school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state-determined purchase price at the time the school bus was purchased by the useful lifetime in months for the appropriate school bus category set forth in WAC 392-142-155;

(c) Calculate the total number of months the bus is eligible for depreciation payment in the current school year; and

(d) Multiply the amount calculated in (b) of this subsection by the number of months calculated in (c) of this subsection.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-245, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-245, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-245, filed 1/2/90, effective 2/2/90.]

**WAC 392-142-250 Allocation of state replacement or depreciation payment.** The superintendent of public instruction shall apportion school bus replacement or depreciation payments each school year calculated as follows:

(1) For school district-owned vehicles:

(a) The September apportionment payment for those school buses issued school bus operating permits in prior school years; or

(b) The first apportionment payment after the issuance of the school bus operating permit for school buses purchased in the current school year; or

(2) For contractor-owned vehicles: According to the schedule set forth in RCW 28A.510.250.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-250, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-250, filed 6/12/03, effective 7/13/03. Statutory Authority: 1990 c 33. 91-16-011 (Order 91-12), § 392-142-250, filed 7/26/91, effective 8/26/91. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-250, filed 1/2/90, effective 2/2/90.]

**WAC 392-142-255 Deposit of payments in transportation vehicle fund.** School districts shall deposit proceeds for the rent, sale, or lease of school buses and replacement payments for school district-owned vehicles in the transportation vehicle fund. School districts shall not deposit school bus depreciation payments for contractor-owned vehicles in the transportation vehicle fund. For school buses placed on the reimbursement system between September 1, 1975, and August 31, 1980, the superintendent of public instruction shall recover ninety percent of the net proceeds of the sale of such vehicles by deduction from the next annual reimbursement allocation. For school buses placed on the reimbursement system between September 1, 1980, and August 31, 1982, the superintendent of public instruction shall recover one hundred percent of the net proceeds of the sale of such vehicles by deduction from the next annual reimbursement allocation.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-255, filed 9/16/05, effective 10/17/05; 03-13-049, § 392-142-255, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-255, filed 1/2/90, effective 2/2/90.]

**WAC 392-142-265 Maintenance and operation.** (1) To the extent possible, school districts shall operate vehicles not less than the number of years of useful lifetime now, or hereafter, assigned to the category of vehicles by the superintendent of public instruction.

(2) A school bus that continues to possess a valid operation permit and operates its useful vehicle life shall be considered to be properly maintained in accordance with general accepted maintenance and operation standards. A school bus which does not operate its useful vehicle life shall be considered as not being properly maintained in accordance with generally accepted maintenance and operation standards unless proven otherwise by the school district. Prima facie evidence of such proof shall include unforeseen events which shorten the useful vehicle life, including but not limited to, fire, flood, explosion, storm, earthquake, or volcanic eruption.

(3) If a district fails to follow generally accepted standards of maintenance and operation or disposes of a bus prior to the end of its useful life time, the superintendent of public instruction shall discontinue reimbursement system payments, including recovering the prorated amount of the current year payment according to the number of months in the current year the bus was not operated.

[Statutory Authority: RCW 28A.150.290. 05-19-072, § 392-142-265, filed 9/16/05, effective 10/17/05. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-265, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-265, filed 1/2/90, effective 2/2/90.]

## Chapter 392-168 WAC

### SPECIAL SERVICE PROGRAMS—CITIZEN COMPLAINT PROCEDURE FOR CERTAIN CATEGORICAL FEDERAL PROGRAMS

#### WAC

392-168-110	Purpose.
392-168-115	Applicability.
392-168-125	Definition—Complaint.
392-168-132	Informing citizens about complaint procedures.
392-168-135	Right to register a complaint.
392-168-140	Contents of complaint.
392-168-145	Procedure for filing a complaint.
392-168-155	Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.
392-168-180	Complaints against the superintendent of public instruction—Investigation of and response to complaints.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-168-120	Definition—Hatch amendment. [Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-120, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-120, filed 4/18/88.] Repealed by 05-19-033, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.300.070.
392-168-160	Appeal to the superintendent of public instruction of a local school district, educational service district, or other subgrantee decision. [Statutory Authority: RCW 28A.02.100. 90-11-029 (Order 90-09), § 392-168-160, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-160, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-160, filed 4/18/88.] Repealed by 05-19-033, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.300.070.
392-168-165	Content of appeal notice. [Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-165, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-165, filed 4/18/88.] Repealed by 05-19-033, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.300.070.

- 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.300.070.
- 392-168-167 General responsibilities of superintendent of public instruction. [Statutory Authority: Chapter 28A.155 RCW. 93-19-065 (Order 93-15), § 392-168-167, filed 9/13/93, effective 10/14/93.] Repealed by 05-19-033, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.300.070.
- 392-168-170 Actions by superintendent of public instruction in response to notices of appeal and notices registering complaints. [Statutory Authority: RCW 28A.02.100. 90-11-029 (Order 90-09), § 392-168-170, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-170, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-170, filed 4/18/88.] Repealed by 05-19-033, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.300.070.

**WAC 392-168-110 Purpose.** The purpose of this chapter is to provide complaint procedures in compliance with 20 U.S.C. 7844 and 7883, and with 34 CFR 299.10-2099.12.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-110, filed 9/12/05, effective 10/13/05. Statutory Authority: Chapter 28A.155 RCW. 93-19-065 (Order 93-15), § 392-168-110, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-110, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-110, filed 4/18/88.]

**WAC 392-168-115 Applicability.** This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

- (1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;
- (2) Title I, Part B, Subpart 1: Reading First;
- (3) Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program;
- (4) Title I, Part C: Education of Migratory Children;
- (5) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;
- (6) Title I, Part F: Comprehensive School Reform;
- (7) Title II, Part A: Teacher and Principal Training and Recruiting Fund;
- (8) Title II, Part D: Enhancing Education Through Technology;

Title III—Language Instruction for Limited English Proficient and Immigrant Students

- (9) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement;
- (10) Title IV—21st Century Schools;
- (11) Title IV, Part A, Subpart 1: Safe and Drug Free Schools and Communities;
- (12) Title IV, Part B: 21st Century Community Learning Centers;

Title V—Promoting Informed Parental Choice and Innovative Programs

- (13) Title V, Part A: Innovative Programs;

Title VI—Flexibility and Accountability

- (14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments;

- (15) Title VI, Part B, Subpart 1: Small, Rural School Achievement Program;

- (16) Title VI, Part B, Subpart 2: Rural and Low-Income Schools;

- (17) Title IX—General Provisions;

- (18) Title IX, Part E (Section 9532): Unsafe School Choice Option.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-115, filed 9/12/05, effective 10/13/05. Statutory Authority: Chapter 28A.155 RCW. 93-19-065 (Order 93-15), § 392-168-115, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-115, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-115, filed 4/18/88.]

**WAC 392-168-125 Definition—Complaint.** As used in this chapter, the term "complaint" means an allegation, by the complainant, that the state, a local school district, an educational service district, or other subgrantee receiving federal funds has violated a federal statute or regulation or a related state regulation that applies to a federal program covered under this chapter.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-125, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.02.100. 90-23-062 (Order 43), § 392-168-125, filed 11/20/90, effective 12/21/90; 90-11-029 (Order 90-09), § 392-168-125, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-125, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-125, filed 4/18/88.]

**WAC 392-168-132 Informing citizens about complaint procedures.** The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

- (1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;
- (2) Conducting inservice training sessions on the complaint process through educational service districts; and
- (3) Including information about the system in statewide conferences.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-132, filed 9/12/05, effective 10/13/05. Statutory Authority: Chapter 28A.155 RCW. 93-19-065 (Order 93-15), § 392-168-132, filed 9/13/93, effective 10/14/93.]

**WAC 392-168-135 Right to register a complaint.** Any individual or organization may file a signed, written complaint.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-135, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.02.100. 90-11-029 (Order 90-09), § 392-168-135, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-135, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-135, filed 4/18/88.]

**WAC 392-168-140 Contents of complaint.** A written complaint filed under this chapter shall include:

- (1) A statement that the state, a local school district, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to a federal program covered under this chapter;
- (2) The specific requirement alleged to have been violated;

- (3) The facts on which the complaint is based;
- (4) The name and address of the complainant;
- (5) The expected resolution of the alleged violation; and
- (6) In the case of a complaint alleging a violation by an entity other than the state and filed directly with the superintendent of public instruction, the name and address of the allegedly offending entity.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-140, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 28A.02.100. 90-11-029 (Order 90-09), § 392-168-140, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-140, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-140, filed 4/18/88.]

#### **WAC 392-168-145 Procedure for filing a complaint.**

The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-145, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-145, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-145, filed 4/18/88.]

**WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.** Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by No Child Left Behind Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. OSPI may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

(10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-155, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-155, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-155, filed 4/18/88.]

**WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints.** (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the

date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

[Statutory Authority: RCW 28A.300.070. 05-19-033, § 392-168-180, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-168-180, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.02.100. 88-09-042 (Order 88-13), § 392-168-180, filed 4/18/88.]

## Title 415 WAC

### RETIREMENT SYSTEMS, DEPARTMENT OF

#### Chapters

<b>415-02</b>	<b>General provisions.</b>
<b>415-103</b>	<b>Washington state patrol retirement system (WSPRS).</b>
<b>415-104</b>	<b>Law enforcement officers' and fire fighters' retirement system.</b>
<b>415-108</b>	<b>Public employees' retirement system.</b>
<b>415-110</b>	<b>School employees' retirement system.</b>
<b>415-111</b>	<b>Plan 3—Defined contribution plans.</b>
<b>415-112</b>	<b>Teachers' retirement system.</b>
<b>415-501</b>	<b>Deferred compensation plan.</b>

#### Chapter 415-02 WAC

#### GENERAL PROVISIONS

#### WAC

415-02-140	What is excess compensation and how is the employer's excess compensation billing calculated?
415-02-180	Is it possible to receive more than one month of service credit in a single retirement plan for a calendar month?
415-02-380	How will my retirement allowance be affected if I choose a benefit option with a survivor feature?

**WAC 415-02-140 What is excess compensation and how is the employer's excess compensation billing calculated? (1) What is excess compensation?** Excess compensation refers to certain payments from an employer to an employee when the payment is used in the calculation of the employee's retirement allowance. The following payments are excess compensation when they are reportable compensation and used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours;

(b) A cash out of other forms of leave, including sick leave and holiday leave;

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(c) A payment for a personal expense, if the payment qualifies as reportable compensation in the employee's own retirement system;

(d) That portion of any payment, such as an overtime or incentive payment, that exceeds twice the employee's regular rate of pay for the period of time that the overtime or incentive payment applies; and

(e) A termination or severance payment.

**(2) How does the payment of excess compensation affect employers?** The department determines how much an employee's retirement benefit will increase as a result of the excess compensation, and bills the employer or employers for the present value of that increase.

(a) If an employee cashes out annual leave while working concurrently for two or more employers and the total cash-outs result in excess compensation, each employer's billing will be based on:

(i) The number of hours cashed out by that employer in relation to the total number of hours cashed out by all employers; and

(ii) The hourly rate paid by that employer.

**Example:** Brian, a PERS 1 member, separated from employment at Agency A and Agency B at the same time. He cashed out 75 hours of annual leave from Agency A and 225 hours from Agency B, resulting in a total of 300 hours that will be used in the calculation of his average final compensation (AFC). A cash-out of unused annual leave in excess of two hundred forty hours is excess compensation (see subsection (1)(a) of this section). Therefore, sixty hours of the cash-out is excess compensation. (300 hours - 240 hours = 60 hours of excess compensation.)

Employer	Total hours cashed out	Percentage of total hours cashed out	Excess compensation billing will be based on:
Agency A	75 hours	25% (75/300)	15 hours (60 hours of excess compensation hours x 25% = 15 hours) at the hourly rate paid by Agency A.
Agency B	225 hours	75% (225/300)	45 hours (60 hours of excess compensation hours x 75% = 45 hours) at the hourly rate paid by Agency B.

(b) If an employee cashes out annual leave from two or more **successive** employers during his/her AFC period and the total cash-outs result in excess compensation, the department will:

(i) Determine the hours cashed out sequentially (employer by employer);

(ii) Identify the employer at the time the cumulative total cashed out exceeded two hundred forty hours, resulting in excess compensation; and

(iii) Bill the employer, identified in (b)(ii) of this subsection, and any subsequent employers during the AFC period, for the number of excess compensation hours each cashed out.

**Example:** Deborah is a TRS 1 member who changed employment three times during her AFC period.

1. When Deborah separated employment from School District A, she cashed out 156 hours of annual leave;

2. When she separated employment from School District B, she cashed out 96 hours of annual leave; and

3. When she separated from School District C, she cashed out an additional 48 hours of annual leave.

School District	Annual Leave Cash-out	Rationale and Determination
A 7/1/03 - 6/30/04	156	The department will not bill School District A because excess compensation did not result from the 156 hours of annual leave Deborah cashed out at School District A.
B 7/1/04 - 2/28/05	96	The cumulative total of the annual leave cashed out by School District A and School District B exceeds 240 hours, and results in 12 hours of excess compensation <sup>1</sup> . School District B's excess compensation billing will be based on 12 hours at the hourly rate paid by School District B.
C 3/1/05 - 6/30/05	48	Since the cumulative total exceeded 240 hours prior to Deborah's employment with School District C, all of the leave cashed out by Agency C is excess compensation. School District C's excess compensation billing will be based on 48 hours at the hourly rate paid by School District C.

<sup>1</sup> 156 hours (cashed out by School District A) plus 96 hours (cashed out by Agency B) = 252 hours. A cash-out of unused annual leave in excess of two hundred forty hours is excess compensation (subsection (1)(a) of this section). 252 hours - 240 hours = 12 hours of excess compensation.

**(3) How is the excess compensation billing calculated?** To determine the amount of each employer's excess compensation billing, the department:

(a) Determines the increased amount of the employee's monthly retirement allowance that will result from the increase in the AFC, based on a standard benefit allowance (benefit option one);

(b) Determines the actuarial factor, based on the employee's age and retirement plan, from WAC 415-02-340; and

(c) Divides the amount of the monthly benefit increase in (a) of this subsection by the actuarial factor in (b) of this subsection.

If two or more employers are responsible for an employee's excess compensation, the department will calculate the bill for each employer individually, based solely on the excess compensation attributed to that employer. See subsection (2)(a) and (b) of this section.

**(4) Examples:**

**(a) Example 1: Excess compensation arising from cash out of sick leave (PERS Plan 1):**

Denise is a 59 year-old PERS Plan 1 member working for a public utility district. She will retire with thirty years of service, and will cash out \$8,000 in sick leave. Denise earned her two highest years of pay during her

last two years of employment; therefore, the department will use these years to compute her AFC.

**Year 1** - \$59,000 Salary

**Year 2** - \$61,000 Salary + \$8,000 sick leave cash out

Q: Did Denise receive excess compensation?

A: Yes. Under subsection (1)(b) of this section, the \$8,000 sick leave cash out is excess compensation.

Q: Will the excess compensation increase Denise's retirement allowance?

A: Yes. Denise's retirement allowance will increase by \$200/month as shown:

**Without the excess compensation (cash out):**

AFC = \$59,000 + \$61,000 = \$120,000

$\frac{\$120,000}{24} = \$5,000/\text{month}$

Retirement allowance = 2% x 30 years x \$5,000 = \$3,000/month

**With the excess compensation (cash out):**

AFC = \$59,000 + \$61,000 + \$8,000 = \$128,000

$\frac{\$128,000}{24} = \$5,333.33/\text{month}$

Retirement allowance = 2% x 30 years x \$5,333.33 = \$3,200/month

**Difference in retirement allowances:**

\$3,200/month - \$3,000/month = \$200/month

Q: What is the employer's excess compensation billing?

A: The employer must pay \$24,565.50, as shown:

Using an annuity factor of 0.0081415<sup>1</sup>:

$\frac{\$200/\text{month}}{0.0081415} = \$24,565.50$

<sup>1</sup>Based on Denise's age of 59. The factor can be found in the table in WAC 415-02-340.

**(b) Example 2: Excess compensation arising from cash out of leave (TRS Plan 1):**

George is a TRS Plan 1 member who has 28 years of service and is retiring at age 55 from a school district. The collective bargaining agreement provides two days of personal holiday leave per year and allows for the cash out at retirement of any unused balance of personal holiday leave. Personal leave days are defined as "other forms of leave" under subsection (1)(b) of this section. The following example shows the computation of excess compensation:

**Year 1** - \$52,500 Salary

**Year 2** - \$54,000 Salary + \$900 for four days of personal leave cash out

Q: Did George receive excess compensation?

A: Yes. Under subsection (1)(b) of this section, the \$900 leave cash out is excess compensation.

Q: Will the excess compensation increase George's retirement allowance?

A: Yes. George's retirement allowance will increase by \$21/month as shown:

**Without the excess compensation (cash out):**

AFC = \$52,500 + \$54,000 = \$106,500

$\frac{\$106,500}{24} = \$4,437.50/\text{month}$

Retirement allowance = 2% x 28 years x \$4,437.50 = \$2,485/month

**With the excess compensation (cash out):**

AFC =  $\$52,500 + \$54,000 + \$900 = \$107,400$   
 $\$107,400/24 = \$4,475/\text{month}$

Retirement allowance =  $2\% \times 28 \text{ years} \times \$4,475 = \$2,506/\text{month}$

**Difference in retirement allowances:**

$\$2,506/\text{month} - \$2,485/\text{month} = \$21/\text{month}$

Q: What is the employer's excess compensation billing?

A: The employer must pay \$2,802.28, as shown:

Using an annuity factor of 0.0074939<sup>2</sup>:

$\frac{\$21/\text{month}}{0.0074939} = \$2,802.28$

<sup>2</sup>Based on George's age of 55. The factor can be found in the table in WAC 415-02-340.

**(c) Example 3: Excess compensation from bonus.**

Susan is retiring at age 65 in PERS Plan 2. Susan's employer awarded her a \$15,083.33 bonus for work she did on a special project in February. The department will compute Susan's excess compensation as follows:

**Year 1** - \$59,000 Salary  
**Year 2** - \$59,000 Salary  
**Year 3** - \$59,000 Salary  
**Year 4** - \$59,000 Salary  
**Year 5** - \$76,083.33 (includes a \$15,083.33 bonus for services provided in the month of February).

Q: Did Susan receive excess compensation?

A: Yes. Under subsection (1)(d) of this section, the portion of the bonus that exceeds twice the employee's regular rate of pay for that period (\$4,916.67) is excess compensation, as shown:

Regular monthly rate:  $\$61,000/12 = \$5,083.33/\text{month}$

Twice February's monthly rate:  $2 \times \$5,083.33 = \$10,166.66$

Excess compensation:  $\$15,083.33 - \$10,166.66 = \$4,916.67$

Q: Will the excess compensation increase Susan's retirement allowance?

A: Yes. It increases by \$49.16/month, as shown:

**Without excess compensation (portion of bonus):**

AFC =  $\$59,000 + \$59,000 + \$59,000 + \$59,000$   
 $+ \$76,083.33 - \$4,916.67 = \$307,166.66$   
 $\$307,166.66/60 = \$5,119.44/\text{month}$

Retirement allowance =  $2\% \times 30 \text{ years} \times \$5,119.44$   
 $= \$3,071.67/\text{month}$

**With the excess compensation (portion of bonus):**

AFC =  $\$59,000 + \$59,000 + \$59,000 + \$59,000$   
 $+ \$76,083.33 = \$312,083.33$   
 $\$312,083.33/60 = \$5,201.39/\text{month}$

Retirement allowance =  $2\% \times 30 \text{ years} \times \$5,201.39$   
 $= \$3,120.83/\text{month}$

**Difference in retirement allowances:**

$\$3,120.83/\text{month} - \$3,071.67/\text{month} = \$49.16/\text{month}$

Q: What is the employer's excess compensation billing?

A: The employer must pay \$6,784.62, as shown:

Using an annuity factor of 0.0072458:

$\frac{\$49.16/\text{month}}{0.0072458} = \$6,784.62$

[Statutory Authority: RCW 41.50.050(5) and 41.50.150. 05-12-107, § 415-02-140, filed 5/27/05, effective 6/27/05; 03-06-043, § 415-02-140, filed 2/27/03, effective 4/1/03.]

**WAC 415-02-180 Is it possible to receive more than one month of service credit in a single retirement plan for a calendar month?** You may not receive more than one month of service credit for a calendar month, or twelve months of service credit during a service credit year, in any one retirement plan.

This includes, but is not limited to, receiving more than one month of service credit during a calendar month for:

- (1) Working in two or more positions covered by the same retirement system;
- (2) Military service and service as an employee in the same month;
- (3) Purchasing service credit for a period of paid or unpaid leave that occurred during the same month you earned service credit for service as an employee;
- (4) Serving as an elected or appointed official during the same month you earned service credit for service as an employee; or
- (5) Working more than the minimum number of hours required to earn one month of service credit.

**EXAMPLE:** Mary, a PERS 1 member, worked full time for the department of retirement systems continuously for five years from January 1, 1996, through December 31, 2000. During the same period, she worked evenings and Saturdays (full time) in a PERS eligible position for the department of licensing. Mary earned a total of five years of service credit, which is the maximum service credit a member may earn in a five-year period.

[Statutory Authority: RCW 41.50.050(5). 05-13-045, § 415-02-180, filed 6/9/05, effective 7/10/05.]

**WAC 415-02-380 How will my retirement allowance be affected if I choose a benefit option with a survivor feature?** This section applies to LEOFF Plan 1 and 2; PERS Plan 1, 2, and 3; SERS Plan 2 and 3; TRS Plan 1, 2, and 3; and WSPRS Plan 2. For information about WSPRS Plan 1, see RCW 43.43.278 and WAC 415-103-215.

(1) **What is a survivor feature?** Some benefit options include a survivor feature, which provides a monthly allowance for your survivor beneficiary after your death.

(2) **What is a "survivor beneficiary"?** The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary."

(3) **What benefit options include a survivor feature?** Benefit options are described in detail for each system and plan in the following state law and regulations:

LEOFF Plan 1:	RCW 41.26.164	WAC 415-104-202
LEOFF Plan 2:	RCW 41.26.460	WAC 415-104-215
PERS Plan 1:	RCW 41.40.188	WAC 415-108-326
PERS Plan 2:	RCW 41.40.660	WAC 415-108-326
PERS Plan 3:	RCW 41.40.845	WAC 415-108-326
SERS Plans 2/3:	RCW 41.35.220	WAC 415-110-326
TRS Plan 1:	RCW 41.32.530	WAC 415-112-492



TRS Plan 2: RCW 41.32.785 WAC 415-112-493  
 TRS Plan 3: RCW 41.32.851 WAC 415-112-493  
 WSPRS Plan 2: RCW 43.43.271 WAC 415-103-225

**(4) Will selecting a benefit option with a survivor feature affect my monthly retirement allowance?** Yes. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature.

**(5) Does my survivor beneficiary's age affect how much my monthly retirement allowance will be reduced?** Yes. Your survivor beneficiary's age is used in determining the amount of your monthly retirement allowance and the allowance of your survivor. The younger the survivor beneficiary, the longer he or she is expected to receive an allowance. Your monthly allowance will be reduced accordingly.

#### Examples

##### (a) Example (a):

Kendra, a PERS Plan 2 member, chooses Option 3 (joint and 50 percent survivorship) at retirement. She names her nephew, Steve, as her survivor beneficiary. This means, if Kendra dies before Steve, Steve will receive a monthly allowance equal to half the amount Kendra was receiving. Steve is 30 years younger than Kendra. The department will calculate the adjustment to Kendra's monthly retirement allowance by using the survivor option factor table ("member older") in subsection (6) of this section. With a 30-year age difference (member's age minus beneficiary's age), the value

corresponding to PERS Plan 2 and Option 3 is 0.753. This value, 0.753, is multiplied against the amount Kendra would have received under Option 1 (no survivor feature). Kendra's monthly retirement allowance will be reduced to about 75% of her Option 1 level.

##### (b) Example (b):

Mark, a LEOFF Plan 2 member, chooses Option 2 (joint and 100 percent survivorship) at retirement. He names his wife, Susan, as his survivor beneficiary. This means, if Mark dies before Susan, Susan will receive a monthly allowance equal to the amount Mark was receiving. Mark is five years younger than Susan. The department will calculate the adjustment to Mark's monthly retirement allowance by using the survivor option factor table ("member younger") in subsection (9) of this section. With a 5-year age difference (member's age minus beneficiary's age), the value corresponding to LEOFF Plan 2 and Option 2 is 0.894. This value, 0.894, will be multiplied against the amount Mark would have received under Option 1 (no survivor feature). Mark's monthly retirement allowance will be reduced to about 89 percent of his Option 1 level.

##### (6) Table - Member older (PERS and SERS)

Survivor option factor table: Member older than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
0	.870	.930	.909	.791	.883	.850	.799	.888	.857
1	.862	.926	.904	.778	.875	.840	.773	.872	.836
2	.857	.923	.900	.767	.868	.832	.760	.864	.826
3	.844	.915	.890	.758	.863	.825	.748	.856	.816
4	.840	.913	.887	.751	.858	.819	.741	.851	.811
5	.836	.910	.884	.743	.853	.813	.734	.846	.805
6	.831	.908	.881	.736	.848	.807	.726	.841	.799
7	.818	.900	.871	.728	.843	.801	.719	.836	.793
8	.814	.897	.867	.721	.838	.795	.712	.832	.787
9	.809	.895	.864	.713	.833	.789	.705	.827	.782
10	.805	.892	.861	.706	.828	.783	.698	.822	.776
11	.802	.890	.858	.699	.823	.777	.692	.818	.771
12	.787	.881	.847	.693	.818	.772	.685	.813	.766
13	.784	.879	.845	.686	.814	.766	.679	.809	.760
14	.780	.876	.842	.680	.809	.761	.673	.805	.755
15	.777	.874	.839	.673	.805	.756	.667	.800	.750
16	.773	.872	.836	.667	.801	.751	.662	.796	.746
17	.770	.870	.834	.662	.796	.746	.656	.792	.741
18	.767	.868	.832	.656	.792	.741	.651	.789	.737
19	.764	.866	.829	.651	.788	.736	.646	.785	.732
20	.762	.865	.827	.645	.785	.732	.641	.781	.728
21	.759	.863	.825	.640	.781	.728	.637	.778	.724
22	.756	.861	.823	.636	.777	.724	.632	.775	.720
23	.754	.860	.821	.631	.774	.720	.628	.771	.717
24	.752	.858	.820	.627	.771	.716	.624	.768	.713
25	.750	.857	.818	.622	.767	.712	.620	.765	.710
26	.748	.856	.817	.618	.764	.709	.616	.762	.707
27	.746	.855	.815	.615	.761	.705	.613	.760	.703
28	.744	.853	.814	.611	.758	.702	.609	.757	.700
29	.743	.852	.812	.607	.756	.699	.606	.755	.697
30	.741	.851	.811	.604	.753	.696	.603	.752	.695
31	.740	.850	.810	.601	.751	.693	.600	.750	.692
32	.738	.849	.809	.598	.748	.690	.597	.748	.690
33	.737	.849	.808	.595	.746	.688	.594	.745	.687
34	.736	.848	.807	.592	.744	.685	.592	.743	.685
35	.735	.847	.806	.589	.742	.683	.589	.741	.683
36	.734	.846	.805	.587	.740	.680	.587	.740	.680
37	.733	.846	.804	.584	.738	.678	.585	.738	.678
38	.732	.845	.804	.582	.736	.676	.582	.736	.677

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
39	.731	.844	.803	.580	.734	.674	.580	.734	.675
40	.730	.844	.802	.578	.732	.672	.578	.733	.673

## (7) Table - Member younger (PERS and SERS)

Survivor option factor table: Member younger than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
-20	.958	.978	.971	.939	.969	.959	.949	.974	.965
-19	.955	.977	.970	.935	.967	.956	.946	.972	.963
-18	.952	.976	.968	.931	.964	.953	.942	.970	.961
-17	.949	.974	.966	.927	.962	.950	.938	.968	.958
-16	.947	.973	.964	.922	.959	.947	.934	.966	.955
-15	.944	.971	.962	.917	.957	.943	.930	.964	.952
-14	.940	.969	.959	.912	.954	.940	.926	.961	.949
-13	.937	.968	.957	.907	.951	.936	.921	.959	.946
-12	.934	.966	.955	.902	.948	.932	.917	.956	.943
-11	.930	.964	.953	.896	.945	.928	.912	.954	.939
-10	.927	.962	.950	.890	.942	.924	.907	.951	.936
-9	.923	.960	.948	.884	.938	.919	.901	.948	.932
-8	.920	.958	.945	.878	.935	.915	.896	.945	.928
-7	.916	.956	.942	.871	.931	.910	.890	.942	.924
-6	.912	.954	.940	.865	.927	.905	.885	.939	.920
-5	.908	.952	.937	.858	.924	.901	.879	.935	.916
-4	.901	.948	.931	.848	.918	.893	.873	.932	.911
-3	.896	.945	.928	.840	.913	.887	.863	.927	.905
-2	.889	.941	.923	.826	.905	.877	.853	.920	.897
-1	.879	.935	.916	.805	.892	.861	.834	.909	.883
0	.870	.930	.909	.791	.883	.850	.799	.888	.857

## (8) Table - Member older (LEOFF Plan 2 and WSPRS Plan 2)

Survivor option factor table: Member older than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
0	0.870	0.930	0.909	0.870	0.930	0.909
1	0.865	0.927	0.905	0.865	0.927	0.905
2	0.860	0.924	0.902	0.860	0.924	0.902
3	0.855	0.922	0.898	0.855	0.922	0.898
4	0.850	0.919	0.894	0.850	0.919	0.894
5	0.845	0.916	0.891	0.845	0.916	0.891
6	0.840	0.913	0.887	0.840	0.913	0.887
7	0.835	0.910	0.883	0.835	0.910	0.883
8	0.830	0.907	0.880	0.830	0.907	0.880
9	0.825	0.904	0.876	0.825	0.904	0.876
10	0.821	0.902	0.873	0.821	0.902	0.873
11	0.816	0.899	0.870	0.816	0.899	0.870
12	0.812	0.896	0.866	0.812	0.896	0.866
13	0.808	0.894	0.863	0.808	0.894	0.863
14	0.803	0.891	0.860	0.803	0.891	0.860
15	0.799	0.888	0.857	0.799	0.888	0.857
16	0.795	0.886	0.854	0.795	0.886	0.854
17	0.792	0.884	0.851	0.792	0.884	0.851
18	0.788	0.881	0.848	0.788	0.881	0.848
19	0.784	0.879	0.845	0.784	0.879	0.845
20	0.781	0.877	0.842	0.781	0.877	0.842
21	0.777	0.875	0.840	0.777	0.875	0.840
22	0.774	0.873	0.837	0.774	0.873	0.837
23	0.771	0.871	0.835	0.771	0.871	0.835
24	0.768	0.869	0.832	0.768	0.869	0.832
25	0.765	0.867	0.830	0.765	0.867	0.830
26	0.763	0.865	0.828	0.763	0.865	0.828
27	0.760	0.864	0.826	0.760	0.864	0.826
28	0.757	0.862	0.824	0.757	0.862	0.824
29	0.755	0.860	0.822	0.755	0.860	0.822
30	0.753	0.859	0.820	0.753	0.859	0.820
31	0.750	0.857	0.818	0.750	0.857	0.818
32	0.748	0.856	0.817	0.748	0.856	0.817
33	0.746	0.855	0.815	0.746	0.855	0.815
34	0.744	0.853	0.814	0.744	0.853	0.814
35	0.742	0.852	0.812	0.742	0.852	0.812

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
36	0.741	0.851	0.811	0.741	0.851	0.811
37	0.739	0.850	0.809	0.739	0.850	0.809
38	0.737	0.849	0.808	0.737	0.849	0.808
39	0.736	0.848	0.807	0.736	0.848	0.807
40	0.734	0.847	0.806	0.734	0.847	0.806

**(9) Table - Member younger (LEOFF Plan 2 and WSPRS Plan 2)**

Survivor option factor table: Member younger than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
-20	0.953	0.976	0.968	0.953	0.976	0.968
-19	0.950	0.974	0.966	0.950	0.974	0.966
-18	0.947	0.973	0.964	0.947	0.973	0.964
-17	0.944	0.971	0.962	0.944	0.971	0.962
-16	0.940	0.969	0.959	0.940	0.969	0.959
-15	0.937	0.967	0.957	0.937	0.967	0.957
-14	0.933	0.965	0.954	0.933	0.965	0.954
-13	0.929	0.963	0.952	0.929	0.963	0.952
-12	0.925	0.961	0.949	0.925	0.961	0.949
-11	0.921	0.959	0.946	0.921	0.959	0.946
-10	0.917	0.957	0.943	0.917	0.957	0.943
-9	0.913	0.954	0.940	0.913	0.954	0.940
-8	0.908	0.952	0.937	0.908	0.952	0.937
-7	0.904	0.949	0.934	0.904	0.949	0.934
-6	0.899	0.947	0.930	0.899	0.947	0.930
-5	0.894	0.944	0.927	0.894	0.944	0.927
-4	0.890	0.942	0.924	0.890	0.942	0.924
-3	0.885	0.939	0.920	0.885	0.939	0.920
-2	0.880	0.936	0.916	0.880	0.936	0.916
-1	0.875	0.933	0.913	0.875	0.933	0.913
0	0.870	0.930	0.909	0.870	0.930	0.909

**(10) Table - Member younger (TRS)**

Survivor option factor table: Member younger than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
-20	0.968	0.984	0.979	0.952	0.975	0.967
-19	0.966	0.983	0.977	0.949	0.974	0.965
-18	0.964	0.982	0.976	0.945	0.972	0.963
-17	0.962	0.981	0.974	0.942	0.970	0.960
-16	0.960	0.979	0.973	0.938	0.968	0.958
-15	0.957	0.978	0.971	0.934	0.966	0.955
-14	0.955	0.977	0.969	0.929	0.963	0.952
-13	0.952	0.976	0.968	0.925	0.961	0.949
-12	0.950	0.974	0.966	0.921	0.959	0.946
-11	0.947	0.973	0.964	0.916	0.956	0.942
-10	0.944	0.971	0.962	0.911	0.953	0.939
-9	0.942	0.970	0.960	0.906	0.951	0.935
-8	0.939	0.968	0.958	0.900	0.948	0.931
-7	0.936	0.967	0.956	0.895	0.945	0.927
-6	0.933	0.965	0.954	0.889	0.941	0.923
-5	0.927	0.962	0.950	0.884	0.938	0.919
-4	0.923	0.960	0.947	0.877	0.934	0.914
-3	0.918	0.957	0.944	0.865	0.928	0.906
-2	0.913	0.955	0.941	0.855	0.922	0.899
-1	0.907	0.951	0.936	0.839	0.912	0.887
0	0.898	0.946	0.930	0.815	0.898	0.869

**(11) Table - Member older (TRS)**

Survivor option factor table: Member older than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
0	0.898	0.946	0.930	0.815	0.898	0.869
1	0.892	0.943	0.925	0.801	0.889	0.858
2	0.888	0.941	0.922	0.790	0.883	0.849
3	0.877	0.935	0.915	0.781	0.877	0.842

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
4	0.873	0.932	0.912	0.772	0.871	0.835
5	0.869	0.930	0.909	0.765	0.867	0.830
6	0.858	0.924	0.901	0.758	0.862	0.824
7	0.855	0.922	0.898	0.751	0.858	0.819
8	0.851	0.920	0.896	0.744	0.853	0.813
9	0.848	0.918	0.893	0.737	0.849	0.808
10	0.845	0.916	0.891	0.730	0.844	0.802
11	0.842	0.914	0.889	0.724	0.840	0.797
12	0.839	0.912	0.887	0.717	0.835	0.792
13	0.836	0.911	0.884	0.711	0.831	0.787
14	0.824	0.904	0.875	0.705	0.827	0.782
15	0.821	0.902	0.873	0.699	0.823	0.777
16	0.819	0.900	0.871	0.694	0.819	0.773
17	0.816	0.899	0.869	0.688	0.815	0.768
18	0.814	0.897	0.868	0.683	0.812	0.764
19	0.812	0.896	0.866	0.678	0.808	0.760
20	0.809	0.895	0.864	0.673	0.805	0.755
21	0.807	0.893	0.863	0.668	0.801	0.751
22	0.805	0.892	0.861	0.664	0.798	0.748
23	0.803	0.891	0.860	0.660	0.795	0.744
24	0.802	0.890	0.858	0.655	0.792	0.740
25	0.800	0.889	0.857	0.651	0.789	0.737
26	0.798	0.888	0.856	0.648	0.786	0.734
27	0.797	0.887	0.855	0.644	0.783	0.731
28	0.796	0.886	0.854	0.640	0.781	0.728
29	0.794	0.885	0.853	0.637	0.778	0.725
30	0.793	0.885	0.852	0.634	0.776	0.722
31	0.792	0.884	0.851	0.631	0.774	0.719
32	0.791	0.883	0.850	0.628	0.771	0.717
33	0.790	0.882	0.849	0.625	0.769	0.714
34	0.789	0.882	0.848	0.622	0.767	0.712
35	0.788	0.881	0.848	0.620	0.765	0.710
36	0.787	0.881	0.847	0.617	0.763	0.708
37	0.786	0.880	0.846	0.615	0.762	0.706
38	0.785	0.880	0.846	0.613	0.760	0.704
39	0.785	0.879	0.845	0.611	0.758	0.702
40	0.784	0.879	0.845	0.609	0.757	0.700

(12) Table - Member younger (LEOFF Plan 1)

Survivor option factor table: Member younger than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3 %
-20	0.958	0.978	0.971
-19	0.955	0.977	0.969
-18	0.952	0.975	0.967
-17	0.949	0.974	0.965
-16	0.946	0.972	0.963
-15	0.942	0.970	0.961
-14	0.939	0.969	0.959
-13	0.935	0.967	0.956
-12	0.932	0.965	0.953
-11	0.928	0.963	0.951
-10	0.924	0.960	0.948
-9	0.920	0.958	0.945
-8	0.916	0.956	0.942
-7	0.911	0.954	0.939
-6	0.907	0.951	0.936
-5	0.902	0.949	0.933
-4	0.898	0.946	0.929
-3	0.893	0.943	0.926
-2	0.888	0.941	0.922
-1	0.883	0.938	0.919

(13) Table - Member older (LEOFF Plan 1)

Survivor option factor table: Member older than beneficiary

Age difference: Member's age minus beneficiary's age

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3%
0	0.878	0.935	0.915
1	0.873	0.932	0.912
2	0.868	0.930	0.908
3	0.864	0.927	0.905
4	0.859	0.924	0.901
5	0.854	0.921	0.898
6	0.849	0.918	0.894
7	0.844	0.915	0.890
8	0.839	0.913	0.887
9	0.835	0.910	0.883
10	0.830	0.907	0.880
11	0.826	0.905	0.877
12	0.821	0.902	0.873
13	0.817	0.899	0.870
14	0.813	0.897	0.867
15	0.809	0.894	0.864
16	0.805	0.892	0.861
17	0.801	0.889	0.858
18	0.797	0.887	0.855
19	0.793	0.885	0.852
20	0.790	0.882	0.849

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3%
21	0.786	0.880	0.847
22	0.783	0.878	0.844
23	0.780	0.876	0.841
24	0.777	0.874	0.839
25	0.774	0.872	0.837
26	0.771	0.871	0.834
27	0.768	0.869	0.832
28	0.765	0.867	0.830
29	0.763	0.865	0.828
30	0.760	0.864	0.826
31	0.758	0.862	0.824
32	0.756	0.861	0.823
33	0.753	0.859	0.821
34	0.751	0.858	0.819
35	0.749	0.857	0.818
36	0.747	0.855	0.816
37	0.745	0.854	0.815
38	0.744	0.853	0.813
39	0.742	0.852	0.812
40	0.740	0.851	0.810

[Statutory Authority: RCW 41.50.050(5), 05-23-062, § 415-02-380, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5), 41.26.162, 41.26.164, chapter 41.45 RCW, 03-12-014, § 415-02-380, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW, 03-02-087, § 415-02-380, filed 12/31/02, effective 2/1/03; 02-18-048, § 415-02-380, filed 8/28/02, effective 9/1/02.]

### Chapter 415-103 WAC

## WASHINGTON STATE PATROL RETIREMENT SYSTEM (WSPRS)

### WAC

415-103-225 What are my WSPRS Plan 2 retirement benefit options?  
415-103-275 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?

**WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options?** This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement allowance paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

#### (2) What are my benefit options?

(a) **Option one: Standard allowance (no survivor option).** The department will pay you a monthly retirement allowance throughout your life. Your monthly allowance will cease upon your death.

(b) **Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allow-

ance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

(c) **Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

(d) **Option four: Joint and two-thirds allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667 percent) of the gross monthly retirement allowance you were receiving.

(3) **Do I need my spouse's consent on the option I choose?** If you are married, you must submit your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 43.43.271(2). If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death. Your increased monthly allowance will be:

(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.

#### Example:

John retires from WSPRS in 2008. John chooses a benefit option with a survivor feature and names Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2013. John's monthly allowance will increase to \$2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2008	2,000.00	1,750.00		0.00
2009		1,750.00	.02	35.00

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2010		1,785.00	.03	53.55
2011		1,838.55	.025	45.96
2012		1,884.51	.03	56.54
2013	2,000.00	1,941.05	—	—
Total COLA's				191.05
Original Monthly Allowance		+ Total COLA's		= New Monthly Allowance
\$2000		+ \$191.05		= \$2,191.05*

\* In the future, John's COLA will be based on his increased monthly allowance.

#### (6) May I change my benefit option after retirement?

Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

#### (7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

[Statutory Authority: RCW 41.50.050(5), 43.43.271. 05-23-062, § 415-103-225, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5), 43.43.260, [43.43.]271, [43.43.]280(1), [43.43.]295. 02-23-037, § 415-103-225, filed 11/13/02, effective 1/1/03.]

**WAC 415-103-275 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?** This section applies to members commissioned on or after January 1, 2003.

(1) You may designate or change a beneficiary by submitting a Beneficiary Designation form to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making distribution to any trust, the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by RCW 43.43.295.

(7) If your surviving spouse is eligible to receive a benefit under RCW 43.43.295(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

#### EXAMPLE ONE.

##### Facts

John, a member, completes a Beneficiary Designation form. In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

### Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 43.43.295.

### EXAMPLE TWO.

#### Facts

John, a member, completes a Beneficiary Designation form. In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

### Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

### EXAMPLE THREE.

#### Facts

When she became a WSPRS member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

### Result

Unless required to do otherwise by court order, the department will comply with RCW 43.43.295(2) and pay Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

### EXAMPLE FOUR.

#### Facts

John is a member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 43.43.295(2). However, Mary died the following week before requesting a distribution from the department.

### Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eli-

gible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). 05-12-041, § 415-103-275, filed 5/25/05, effective 6/25/05.]

## Chapter 415-104 WAC

### LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM

#### WAC

415-104-111	How does the department calculate the retirement allowance of a LEOFF Plan 2 member who retires, reenters employment, and then either retires or separates employment again?
415-104-202	Survivor benefit options—LEOFF Plan 1.
415-104-215	What are my retirement benefit options—LEOFF Plan 2?
415-104-450	How do I designate a beneficiary, and who will receive a distribution if I die before retirement?

**WAC 415-104-111 How does the department calculate the retirement allowance of a LEOFF Plan 2 member who retires, reenters employment, and then either retires or separates employment again?** This rule establishes a method to actuarially recompute your retirement allowance if you are a Plan 2 member who retires, reenters employment causing your retirement allowance to be suspended, and then either retires or separates employment again.

**(1) If you return to employment in a LEOFF eligible position, you must reenter membership.**

(a) If you previously retired before age fifty-three, the department will:

(i) Calculate your retirement allowance pursuant to RCW 41.26.420 using:

(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(B) Any increase in your final average salary resulting from your reentry into membership; and

(ii) Actuarially reduce your retirement allowance:

(A) Based on the present value of the retirement allowance payments you received during your initial retirement;

(B) To reflect the difference in the number of years between your current age and the attainment of age fifty-three, if applicable; and

(C) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(b) If you previously retired at or after age fifty-three, the department will recompute your retirement allowance pursuant to RCW 41.26.420 and include any additional service credit you earned and any increase in your final average salary resulting from your reentry into membership. The department will actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(c) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

**(2) If you enter employment in a PERS, TRS or SERS eligible position, whether or not you enter PERS, TRS or SERS membership, your LEOFF retirement allowance will be suspended under RCW 41.26.500. Upon separation from such employment, your suspended retirement allowance will**

be reinstated. In addition, you may choose to have the total monthly retirement payments you would have received had you not reentered employment, plus interest, either:

- (a) In a lump sum; or
- (b) Actuarially computed in your retirement allowance.

[Statutory Authority: RCW 41.50.050(5), 41.26.500. 05-12-043, § 415-104-111, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.26.470, 2001 c 261. 02-14-072, § 415-104-111, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 41.50.050. 94-09-040, § 415-104-111, filed 4/19/94, effective 5/20/94.]

**WAC 415-104-202 Survivor benefit options—LEOFF Plan 1.** (1) **To whom does this section apply?** This section applies to you if you are a retiree of LEOFF Plan 1.

(2) **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

(3) **How will my monthly retirement allowance be affected by selecting a flexible survivor option?** Your monthly retirement allowance will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

(4) **What are the flexible survivor option choices?**

(a) **Joint and whole allowance option.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your surviving spouse a monthly allowance equal to the gross monthly retirement allowance you were receiving.

(b) **Joint and one-half allowance option.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your surviving spouse a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

(c) **Joint and two-thirds allowance option.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your surviving spouse a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

(5) **Do I qualify to add a flexible survivor option?** You may select a flexible survivor option if:

- (a) Your current spouse is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161;
- (b) Some portion of your monthly retirement allowance is payable to you, after any reduction pursuant to a property division obligation under RCW 41.50.670;
- (c) You have not previously selected a flexible survivor option; and
- (d) You meet the deadline and application requirements in subsection (6) of this section.

(6) **How do I add a flexible survivor option?** You may select a flexible survivor option and name your current spouse as your survivor beneficiary, provided that:

- (a) The selection is made:
  - (i) During a one-year window, on or after the date of the first anniversary and before the second anniversary of the marriage; or

(ii) No later than June 30, 2006, if you cannot comply with (a)(i) of this subsection because you were married prior to July 1, 2005;

(b) You provide a copy of your certified marriage certificate to the department;

(c) You provide proof, satisfactory to the department, of your current spouse's birth date; and

(d) You file the properly completed forms with the department in a timely manner.

(7) **May I remove the flexible survivor option in the future?** Your choice of a flexible survivor option is irrevocable with the following exceptions:

- (a) Your spouse dies before you; or
- (b) You and your spouse divorce.

See subsection (8) of this section.

(8) **What happens if my spouse dies before me, or if we divorce?** If your spouse dies before you, or if you divorce, your monthly retirement allowance will increase, effective the first day of the following month. Your increased monthly allowance will be the amount you would have received had you not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) you received prior to your spouse's death.

(9) **What happens to my eligible surviving children's share if I select a flexible survivor option?** There is *no* impact to the benefit provided under RCW 41.26.160 or 41.26.161 to surviving children if you select a flexible survivor option.

(10) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating retirement allowances.

**Terms used in this section:**

- (a) Child or children - RCW 41.26.030(7).
- (b) Eligible surviving child - RCW 41.26.160 and 41.26.161.
- (c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.
- (d) Surviving spouse - RCW 41.26.030(6).

[Statutory Authority: RCW 41.50.050(5), 41.26.164. 05-22-110, § 415-104-202, filed 11/2/05, effective 12/3/05. Statutory Authority: RCW 41.50.050(5), 41.26.162, 41.26.164, chapter 41.45 RCW. 03-12-014, § 415-104-202, filed 5/27/03, effective 7/1/03.]

**WAC 415-104-215 What are my retirement benefit options—LEOFF Plan 2?** If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly allowance for duty disability under RCW 41.26.470, you must choose to have your monthly retirement allowance paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the sur-



vivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

**(2) What are my benefit options?**

**(a) Option one: Standard allowance (no survivor feature).** The department will pay you a monthly retirement allowance throughout your lifetime. Your monthly allowance will cease upon your death.

**(b) Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

**(c) Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

**(d) Option four: Joint and two-thirds allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

**(3) Do I need my spouse's consent on the option I choose?** If you are married, you must provide your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.26.460(2). If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.

**(a) Members who retire on or after January 1, 1996.** Your increased monthly allowance will be:

- (i) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus
- (ii) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death based on your original option selection.

**Example:**

Agnes retires in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes' monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Bea-

trice dies in January 2001. Agnes' monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
Total COLA's				191.05
Original Option One Monthly Allowance \$2000				+ Total COLA's = New Monthly Allowance
				+ \$191.05 = \$2,191.05*

\* In the future, Agnes' COLA will be based on her increased monthly allowance.

**(b) Members who retired before January 1, 1996.** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.26.460(3).

**(6) May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

**(a) Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

**(b) Postretirement marriage option.** If you select the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

**(c) Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

[Statutory Authority: RCW 41.50.050(5), 41.26.460. 05-23-062, § 415-104-215, filed 11/14/05, effective 12/15/05; 03-12-014, § 415-104-215, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5), 41.26.-460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845, 01-10-045, § 415-104-215, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050, 99-16-075, § 415-104-215, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-104-215, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-014, § 415-104-215, filed 1/7/91, effective 2/7/91.]

**WAC 415-104-450 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?** This section applies to Plan 2 members.

(1) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by RCW 41.26.510.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.26.510(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

#### **Examples:**

##### **EXAMPLE ONE.**

##### **Facts**

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

##### **Result**

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.26.510.

##### **EXAMPLE TWO.**

##### **Facts**

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

##### **Result**

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

##### **EXAMPLE THREE.**

##### **Facts**

When she became a LEOFF Plan 2 member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

##### **Result**

Unless required to do otherwise by court order, the department will comply with RCW 41.26.510(2) and pay

Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

#### EXAMPLE FOUR.

##### Facts

John is a LEOFF 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.26.510(2). However, Mary died the following week before requesting a distribution from the department.

##### Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). 05-12-041, § 415-104-450, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050. 00-10-017, § 415-104-450, filed 4/21/00, effective 5/22/00.]

### Chapter 415-108 WAC

#### PUBLIC EMPLOYEES' RETIREMENT SYSTEM

##### WAC

415-108-315	How do I designate a beneficiary, and who will receive a distribution if I die before retirement?
415-108-326	What are my retirement benefit options?
415-108-436	PERS Plans 2 and 3 disability benefits.
415-108-475	Fringe benefits.
415-108-575	How is the compensation adjustment for elected officials computed?
415-108-728	If I work concurrently in a PERS position and TRS position, which system will I be in?
415-108-830	How does the department calculate the retirement allowance of a PERS Plan 2 or Plan 3 member who retires, reenters PERS membership, and then retires again?

**WAC 415-108-315 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?** This section applies to the designation of beneficiaries for Plan 1 and Plan 2 members' defined benefit and Plan 3 members' defined contribution accounts. RCW 41.40.835 governs the defined benefit portion of Plan 3.

(1) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not

in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making a distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, and telephone number of the current trustee; and

(iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by:

(a) RCW 41.40.270 for Plan 1 members;

(b) RCW 41.40.700 for Plan 2 members; and

(c) RCW 41.34.070 for Plan 3 members.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.40.270(2) or 41.40.700(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

##### Examples:

#### EXAMPLE ONE.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

##### Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.40.270 for Plan 1 members, RCW 41.40.700 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

#### EXAMPLE TWO.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no

trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

### Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

### EXAMPLE THREE.

#### Facts

When she became a PERS 1 member, Joan was unmarried and named her mother as her beneficiary. Joan later married, but did not complete a new beneficiary form before she died with four years of service.

### Result

Unless required to do otherwise by court order, the department will comply with RCW 41.40.270 (1)(b) and pay Joan's surviving spouse the accumulated contributions in her retirement account. In this case, Joan's mother will not receive a distribution.

### EXAMPLE FOUR.

#### Facts

John is a PERS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.40.700(2). However, Mary died the following week before requesting a distribution from the department.

### Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). 05-12-041, § 415-108-315, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.40.270, 41.40.700, 41.40.835. 02-03-120, § 415-108-315, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-108-315, filed 4/21/00, effective 5/22/00.]

**WAC 415-108-326 What are my retirement benefit options?** Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement allowance paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

**(1) Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the

duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

### (2) What are my benefit options?

**(a) Option one: Standard allowance (no survivor feature).** The department will pay you a monthly retirement allowance throughout your lifetime. Your monthly allowance will cease upon your death.

**(b) Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

**(c) Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

**(d) Option four: Joint and two-thirds allowance (available to members retiring on or after January 1, 1996).** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

**(3) Do I need my spouse's consent on the option I choose?** If you are married, you must provide your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845. If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement allowance will be actuarially reduced to offset the cost of this benefit.

**(6) What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.

**(a) Members who retired on or after January 1, 1996.** Your increased benefit will be:

(i) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(ii) Any COLAs you received prior to your survivor beneficiary's death, based on your original option selection.

**Example:**

Agnes retires from PERS Plan 2 in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes' monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2001. Agnes' monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
Original Monthly Allowance		+ Total COLA's	Total COLA's	191.05
\$2000		+ \$191.05	= New Monthly Allowance	= \$2,191.05*

\* In the future, Agnes' COLA will be based on her increased monthly allowance.

(b) **Members who retire before January 1, 1996.** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.40.188(3) (Plan 1) or RCW 41.40.660(3) (Plan 2).

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement allowance. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

[Statutory Authority: RCW 41.50.050(5), 41.40.188, 41.40.660, 41.40.845, 05-23-062, § 415-108-326, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845, 01-10-045, § 415-108-326, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050, 99-14-008, § 415-108-326, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660, 96-01-047, § 415-108-326, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249, 91-03-015, § 415-108-326, filed 1/7/91, effective 2/7/91.]

**WAC 415-108-436 PERS Plans 2 and 3 disability benefits.** This section covers disability benefits provided for in RCW 41.40.670 and 41.40.825 for members of PERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a PERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for early retirement factors and examples.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for early retirement factors and examples.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-108-326. If you choose an option with a survivor feature, your monthly benefit will be actuarially reduced to offset the cost.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete, sign and have notarized. If you are married, your spouse must sign consent of the benefit option you choose.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PERS employment.

(i) If you are continuing to perform the duties of your position or another PERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.40.052(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.40.054.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.40.010 (4)(b), at a comparable compensation.

(b) If you return to employment and reenter PERS membership, your benefits will cease.

(16) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of PERS Plan 2, see RCW 41.40.625.

(ii) If you are a member of PERS Plan 3, see RCW 41.40.815.

[Statutory Authority: RCW 41.50.050(5), 41.40.670 and 41.40.825. 05-12-106, § 415-108-436, filed 5/27/05, effective 6/27/05.]

**WAC 415-108-475 Fringe benefits.** Fringe benefits provided by an employer are not a salary or wage, and therefore are not reportable compensation. Fringe benefits include, but are not limited to:

(1) Employer retirement contributions;

(2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or

(3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-108-455.

[Statutory Authority: RCW 41.50.050(5). 05-12-109, § 415-108-475, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 03-06-042, § 415-108-475, filed 2/27/03, effective

4/1/03. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-475, filed 6/24/99, effective 7/25/99; 98-09-059, § 415-108-475, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-575 How is the compensation adjustment for elected officials computed?** (1) This section provides the department's inflation adjustment under RCW 41.40.023 (3)(b) regarding elected officials.

(2) The department uses the criteria in RCW 41.26.240<sup>1</sup> in making annual inflation adjustments to the fifteen thousand dollar compensation threshold stated in RCW 41.40.023 (3)(b).

(3) The department adjusts the compensation threshold on April 1st of each year.<sup>2</sup>

(4) The department makes this information available upon request. For further information, please contact the department. Please see WAC 415-06-100 for contact information.

Footnotes to section:

<sup>1</sup> The department uses this LEOFF statute because the statute explains how to use the Consumer Price Index for Seattle in making these annual adjustments.

<sup>2</sup> In 2001, the threshold was \$19,263. In 2002, the threshold was \$19,948. In 2003, the threshold was \$20,595. The 2004 threshold, effective April 2005, is \$20,919.

[Statutory Authority: RCW 41.50.050(5). 05-12-109, § 415-108-575, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. 03-08-090, § 415-108-575, filed 4/2/03, effective 5/1/03.]

**WAC 415-108-728 If I work concurrently in a PERS position and TRS position, which system will I be in?** (1) If you work concurrently in a PERS and TRS position, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either PERS or TRS according to the following table:

**Former TRS Plan 1 Members <sup>1/</sup>**

<b>Type of Employment <sup>2/</sup></b>	<b>Type of Employer(s)</b>	<b>System You Will Be Reported In</b>
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for the PERS position.</li> </ol>
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for the PERS position.</li> </ol>

**TRS Plan 1 Members**

<b>Type of Employment <sup>2/</sup></b>	<b>Type of Employer(s)</b>	<b>System You Will Be Reported In</b>
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect either to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for PERS position.</li> </ol>
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

**TRS Plan 2 Members**

<b>Type of Employment <sup>2/</sup></b>	<b>Type of Employer(s)</b>	<b>System You Will Be Reported In</b>
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. <sup>3/</sup>
	A TRS employer and non-TRS employer	You must elect either to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for the PERS position.</li> </ol>



## PERS Members

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only. Your TRS service will not be reported unless you have met the eligibility criteria for TRS membership and choose to either: 1. Have your TRS service reported in PERS for both positions <sup>4/</sup> ; or 2. Establish TRS membership and have your service in both positions reported in TRS. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you have met the eligibility criteria for TRS membership and choose to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

## Neither TRS Nor PERS Member

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

<sup>1/</sup> "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.

<sup>2/</sup> Means during the same school year.

<sup>3/</sup> EXAMPLE: A TRS 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS 2.  
EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

<sup>4/</sup> This provision applies retroactively to July 1, 1996.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.40.010.
- (b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.-010 (TRS).
- (c) "Ineligible position" - RCW 41.40.010.
- (d) "Member" - RCW 41.40.010.
- (e) "Membership" - RCW 41.40.023.
- (f) "Report" - WAC 415-108-010.
- (g) "Service" - RCW 41.40.010.

[Statutory Authority: RCW 41.50.050(5) and chapters 41.32 and 41.40 RCW. 05-03-001, § 415-108-728, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-728, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-108-728, filed 12/12/00,

effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-728, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-830 How does the department calculate the retirement allowance of a PERS Plan 2 or Plan 3 member who retires, reenters PERS membership, and then retires again?** This rule establishes a method to actuarially recompute your defined benefit retirement allowance if you are a Plan 2 or Plan 3 member who retires, reenters PERS membership causing your retirement allowance to stop, and then retires again.

(1) **If you previously retired before age sixty-five**, the department will:

- (a) Recompute your retirement allowance pursuant to RCW 41.40.620 (Plan 2) or 41.40.790 (Plan 3) using:

(i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(ii) Any increase in your average final compensation resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

(i) Based on the present value of the retirement allowance payments you received during your initial retirement;

(ii) To reflect the difference in the number of years between your current age and the attainment of age sixty-five, if applicable; and

(iii) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-108-326.

(2) **If you previously retired at or after age sixty-five**, the department will recompute your retirement allowance pursuant to RCW 41.40.620 (Plan 2) or 41.40.790 (Plan 3) and include any additional service credit you earned and any increase in your average final compensation resulting from your reentry into membership. The department will actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-108-326.

(3) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

[Statutory Authority: RCW 41.50.050(5), 41.40.690, 41.40.850, 41.40.037, 05-12-043, § 415-108-830, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.40.620, 41.40.690, 02-03-120, § 415-108-830, filed 1/23/02, effective 3/1/02; Recodified as § 415-108-830, 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050, 94-09-040, § 415-108-580, filed 4/19/94, effective 5/20/94.]

## Chapter 415-110 WAC

### SCHOOL EMPLOYEES' RETIREMENT SYSTEM

#### WAC

415-110-115	How is a position determined eligible?
415-110-315	How do I designate a beneficiary, and who will receive a distribution if I die before retirement?
415-110-436	SERS Plans 2 and 3 disability benefits.
415-110-610	What are my retirement benefit options?
415-110-830	How does the department calculate the retirement allowance of a SERS Plan 2 or Plan 3 member who retires, reenters SERS membership, and then retires again?

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

415-110-326	Retirement benefit options. [Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845, 01-10-045, § 415-110-326, filed 4/26/01, effective 6/1/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW, 01-01-059, § 415-110-326, filed 12/12/00, effective 1/12/01.] Repealed by 05-23-062, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5).
415-110-690	How is my eligibility evaluated? [Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW, 02-18-046, § 415-110-690, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW, 01-01-059, § 415-110-690, filed 12/12/00, effective 1/12/01.] Repealed by 05-22-108, filed 11/2/05, effective 12/3/05. Statutory Authority: RCW 41.50.050(5), 41.35.020, and 41.35.010(2). Later promulgation, see WAC 415-110-115.

**WAC 415-110-115 How is a position determined eligible?** (1) A position is eligible if it meets the criteria of an eligible position under RCW 41.35.010.

(2) Your employer will evaluate your position's eligibility for a particular year at the beginning of the year unless you are working as an on-call substitute.

(3) Your employer may reclassify a position's eligibility based upon its work history.

(a) If your employer declares a position to be ineligible at the beginning of a year, and by the end of the year it has actually required five or more months of seventy or more hours of compensated service, your employer will review the position's eligibility. If at the end of the first year:

(i) Your employer believes the position meets the requirements for an eligible position and declares the position as eligible, your employer will report your hours and compensation to the department effective prospectively from the date your employer makes the determination that the position is eligible; or

(ii) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define it as ineligible. However, if during the next year, the position actually requires five or more months of seventy or more hours of compensated service, your employer will declare the position as eligible. Once the position is reclassified as eligible, your employer will report your hours and compensation to the department retroactively from the first month of the first year that the position required seventy or more hours of compensated service.

(b) If the position has been classified as eligible, but does not require five or more months of seventy or more hours of compensated service during at least one year in any two-year period, your employer will reclassify it as ineligible.

(4) The department may reclassify a position's eligibility if the history of the position shows it has required five or more months of seventy or more hours of compensated service for a period of two consecutive years. Once the position is reclassified as eligible, your employer will report your hours and compensation to the department retroactively from the first month of the first year that the position required seventy or more hours of compensated service.

[Statutory Authority: RCW 41.50.050(5), 41.35.020, and 41.35.010(2). 05-22-108, § 415-110-115, filed 11/2/05, effective 12/3/05.]

**WAC 415-110-315 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?** This section applies to the designation of beneficiaries for Plan 2 members' defined benefit and Plan 3 members' defined contribution accounts. RCW 41.35.710 governs the defined benefit portion of Plan 3.

(1) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form.

You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making distribution to any trust, the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by:

(a) RCW 41.35.460 for Plan 2 members; and

(b) RCW 41.34.070 for Plan 3 members.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.35.460(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

### **Examples:**

#### **EXAMPLE ONE.**

##### **Facts**

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

##### **Result**

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.35.460 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

#### **EXAMPLE TWO.**

##### **Facts**

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

##### **Result**

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

#### **EXAMPLE THREE.**

##### **Facts**

When she became a SERS Plan 2 member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

##### **Result**

Unless required to do otherwise by a court order, the department will comply with RCW 41.35.460(2) and pay Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

#### **EXAMPLE FOUR.**

##### **Facts**

John is a SERS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.35.460(2). However, Mary died the following week before requesting a distribution from the department.

##### **Result**

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). 05-12-041, § 415-110-315, filed 5/25/05, effective 6/25/05. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-315, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-436 SERS Plans 2 and 3 disability benefits.** This section covers disability benefits provided for in RCW 41.35.440 and 41.35.690 for members of SERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses. Members may also be eligible for benefits from the Washington state departments of labor and industries (work-

ers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a SERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for early retirement factors and examples.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for early retirement factors and examples.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-110-326. If you choose an option with a survivor feature, your monthly benefit will be actuarially reduced to offset the cost.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete, sign and have notarized. If you are married, your spouse must sign consent of the benefit option you choose.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from SERS employment.

(i) If you are continuing to perform the duties of your position or another SERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a SERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by

federal law. For more information, see RCW 41.35.100(3) or contact the department.

**(13) Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.35.-110.

**(14) How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

**(15) Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.35.010(4), at a comparable compensation.

(b) If you return to employment and reenter SERS membership, your benefits will cease.

**(16) If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to SERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of SERS Plan 2, see RCW 41.35.410.

(ii) If you are a member of SERS Plan 3, see RCW 41.35.670.

[Statutory Authority: RCW 41.50.050(5), 41.35.020, 41.35.440, and 41.35.690. 05-19-014, § 415-110-436, filed 9/9/05, effective 10/10/05.]

**WAC 415-110-610 What are my retirement benefit options?** Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement allowance paid to you by one of the options described in this section.

**(1) Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your

"survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

**(2) What are my benefit options?**

**(a) Option one: Standard allowance (no survivor feature).** The department will pay you a monthly retirement allowance throughout your lifetime. Your monthly retirement allowance will cease upon your death.

**(b) Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

**(c) Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

**(d) Option four: Joint and two-thirds allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

**(3) Do I need my spouse's consent on the option I choose?** If you are married, you must provide your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.35.220. If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death. Your increased monthly allowance will be:

(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.

**Example:**

Agnes retires from SERS Plan 2 in 2006. Agnes chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes' monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2011. Agnes' monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2006	2,000.00	1,750.00		0.00
2007		1,750.00	.02	35.00
2008		1,785.00	.03	53.55
2009		1,838.55	.025	45.96
2010		1,884.51	.03	56.54
2011	2,000.00	1,941.05	—	—
			Total COLA's	191.05
Original Option One Monthly Allowance \$2000			+ Total COLA's + \$191.05	= New Monthly Allowance = \$2,191.05*

\* In the future, Agnes' COLAs will be based on her increased monthly allowance.

**(6) May I change my benefit option after retirement?**

Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?****(a) Plan 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement allowance. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

[Statutory Authority: RCW 41.50.050(5), 41.35.220. 05-23-062, § 415-110-610, filed 11/14/05, effective 12/15/05.]

**WAC 415-110-830 How does the department calculate the retirement allowance of a SERS Plan 2 or Plan 3 member who retires, reenters SERS membership, and then retires again?** This rule establishes a method to actuarially recompute your defined benefit retirement allowance if you are a Plan 2 or Plan 3 member who retires, reenters SERS membership causing your retirement allowance to stop, and then retires again.

(1) **If you previously retired before age sixty-five**, the department will:

(a) Recompute your retirement allowance pursuant to RCW 41.35.400 (Plan 2) or RCW 41.35.620 (Plan 3) using:

(i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(ii) Any increase in your average final compensation resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

(i) Based on the present value of the retirement allowance payments you received during your initial retirement;

(ii) To reflect the difference in the number of years between your current age and the attainment of age sixty-five, if applicable; and

(iii) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-110-326.

(2) **If you previously retired at or after age sixty-five**, the department will recompute your retirement allowance pursuant to RCW 41.35.400 (Plan 2) or RCW 41.35.620 (Plan 3) and include any additional service credit you earned

and any increase in your average final compensation resulting from your reentry into membership. The department will actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-110-326.

(3) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

[Statutory Authority: RCW 41.50.050(5), 41.35.230, 41.35.060, 05-12-043, § 415-110-830, filed 5/25/05, effective 6/25/05. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW, 01-01-059, § 415-110-830, filed 12/12/00, effective 1/12/01.]

## Chapter 415-111 WAC

### PLAN 3—DEFINED CONTRIBUTION PLANS

#### WAC

415-111-310 Defined contribution account distribution (withdrawal).  
415-111-320 May I purchase a life annuity with my Plan 3 defined contribution account?

**WAC 415-111-310 Defined contribution account distribution (withdrawal).** (1) **How do I request a distribution (withdrawal) of funds from my defined contribution account?**

(a) You must separate from all eligible employment;  
(b) The department must receive the notice of separation from your employer(s) through the retirement transmittal system; and  
(c) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form. See WAC 415-111-110.

(2) **Can I receive an expedited distribution?**

(a) If you are terminally ill and eligible, the department will arrange for payment to you within ten workdays. To be eligible for an expedited payment:

(i) You must separate from all eligible employment;  
(ii) The department must receive the notice of separation from your employer(s);  
(iii) You or your beneficiaries must submit documentation to the department verifying your terminal illness; and  
(iv) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110).

(b) If you have an emergency, the department will consider your request for expedited payment and arrange for expedited payment to you whenever possible. To be eligible for consideration:

(i) You must separate from all eligible employment;  
(ii) The department must receive the notice of separation from your employer(s);  
(iii) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110); and  
(iv) You or your beneficiaries must submit documentation to the department verifying and explaining your emergency. The department will consider only unforeseeable emergencies or serious illnesses or death of you or a close family or household member.

(c) If you are invested in a self-directed option, the Plan 3 recordkeeper will distribute your entire self-directed account balance, less any applicable tax withholding.

(d) If you are invested in the Total Asset Portfolio (TAP), the Plan 3 recordkeeper will distribute 80% of your estimated TAP account balance, less any applicable tax withholding. You will be paid the balance of your account after the final valuation has been made.

(3) **Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If you return to work in an eligible position after all the criteria in subsection (1) of this section are met, you may receive distribution from your defined contribution account.

(4) **What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the self-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the self-directed program may be made monthly, quarterly, semiannually or annually. Both programs have a minimum payment requirement of one hundred dollars per month.

(d) **Personalized payment plan. In either program,** you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase. In either program,** you may request to have your funds used to purchase an annuity that pays a benefit for your lifetime or the lifetimes of you and your joint annuitant. See WAC 415-111-320 for information about purchasing an annuity and descriptions of the various annuity contracts.

(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses will be used to adjust the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

**EXAMPLE (WSIB - Partial rollover with payments until account exhausted):**

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not

want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

**EXAMPLE (Self - Partial rollover with payments for fixed period):**

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

Summary of Distribution Options	
SELF	WSIB
<b>Lump Sum Cash Distribution or Direct Rollover</b>	<b>Lump Sum Cash Distribution or Direct Rollover</b>
<ul style="list-style-type: none"> <li>– entire account</li> <li>– partial amount</li> <li>– remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).</li> </ul>	<ul style="list-style-type: none"> <li>– entire account</li> <li>– partial amount</li> <li>– remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).</li> </ul>
<b>Scheduled Payments</b>	<b>Scheduled Payments</b>
<ul style="list-style-type: none"> <li>– equal payments</li> <li>– monthly, quarterly, semi-annual or annual</li> <li>– specified period of time, <b>or</b></li> <li>– until the account is exhausted</li> <li>– payments can be combined life expectancy of you and a beneficiary.</li> </ul>	<ul style="list-style-type: none"> <li>– equal payments</li> <li>– monthly payments only</li> <li>– specified period of time, <b>or</b></li> <li>– until the account is exhausted</li> <li>– payments can be combined life expectancy of you and a beneficiary.</li> </ul>
<b>Annuity Purchase</b>	<b>Annuity Purchase</b>
<ul style="list-style-type: none"> <li>– purchase an annuity from an insurance company</li> <li>– set up to pay benefits for</li> <li>– your lifetime, or</li> <li>– lifetimes of you and your joint annuitant.</li> </ul>	<ul style="list-style-type: none"> <li>– purchase an annuity, administered by the state of Washington</li> <li>– set up to pay benefits for</li> <li>– your lifetime, <b>or</b></li> <li>– lifetimes of you and your joint annuitant.</li> </ul>
<b>In addition to the above, you may set up:</b>	<b>In addition to the above, you may set up:</b>
<b>Personalized Payment Plan</b>	<b>Personalized Payment Plan</b>
<ul style="list-style-type: none"> <li>– customized for your needs</li> <li>– available for options above.</li> </ul>	<ul style="list-style-type: none"> <li>– customized for your needs</li> <li>– available for options above.</li> </ul>

(6) **Minimum required distribution.** Beginning on April 1 of the calendar year following the year in which you turn age 70 1/2, you are required to withdraw a minimum amount from your defined contributions annually. If you are still working at age 70 1/2, distribution is required to begin immediately upon retirement.

(7) See RCW 41.34.070 for additional information.

[Statutory Authority: RCW 41.50.050(5) and 41.50.088. 05-24-050, § 415-111-310, filed 12/1/05, effective 1/1/06. Statutory Authority: RCW 41.50.050(5), 41.34.070(3). 03-19-120, § 415-111-310, filed 9/17/03, effective 11/1/03. Statutory Authority: RCW 41.50.050(5) and 41.34.070. 02-03-120, § 415-111-310, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-310, filed 12/12/00, effective 1/12/01.]

**WAC 415-111-320 May I purchase a life annuity with my Plan 3 defined contribution account?** Any time after you become eligible to withdraw funds from your Plan 3 account, you may use part or all of your funds to purchase a life annuity according to this section. To purchase a Total Allocation Portfolio (TAP) Annuity that is administered by the state of Washington you must use funds that are in the Washington state investment board (WSIB) investment program. To purchase an annuity through an insurance company that is offered by the self-directed investment program, you must use funds that are in the self-directed investment program.

(1) **What is a life annuity?** A life annuity is a contract that provides a guaranteed income for the rest of your life in exchange for a lump-sum dollar amount you pay up front. The contract specifies the amount you pay to purchase the annuity, the amount you will receive each month, and any other terms and conditions.

(a) **A single life annuity** is based on your lifetime. It provides guaranteed payments for as long as you live. The payments stop upon your death.

(b) **A joint life annuity** is based on two lifetimes, yours and another person that you choose (referred to as your joint annuitant). It provides guaranteed payments for as long as you live, and then for as long as your joint annuitant lives. The payments stop when both you and your joint annuitant die.

(c) **A term certain—Single life annuity** is based on your lifetime. It provides you with regular payments for as long as you live. It also guarantees the payments for a specific, predetermined period of time (term certain). If you die before the specified period of time, payments will continue to your beneficiary for the balance of the specified period.

(d) **A term certain—Joint life annuity** is based on two lifetimes, yours and your joint annuitant's. It provides regular payments for as long as you or your joint annuitant live. It also guarantees those payments for a specific, predetermined period of time (term certain). If you and your joint annuitant should both die before the specified period of time, payments will continue to your beneficiary for the balance of the specified period.

**Example (Term certain—Joint life annuity):**

John purchased a 20-year term certain joint life annuity. He received monthly payments until his death 10 years later. Upon John's death, Mary, John's joint annuitant, will receive payments for the duration of her life.

- If Mary lives for 5 years after John's death, upon her death the annuity will make payments to John's beneficiary for 5 years, the remainder of the 20-year term.
- If Mary lives for 15 years after John's death, upon her death the annuity will cease. The annuity will



have paid benefits for 25 years, five years beyond the 20-year guaranteed period.

(2) **Are the life annuities offered by each investment program different?** The life annuities offered through the WSIB investment program and the self-directed investment program have distinct features and options. Each program may offer some or all of the annuities described in subsection (1) of this section. Minimum purchase price, payment frequency, survivorship percentages, length of term certain annuities, and other optional features differ between programs as well.

(3) **How are the annuity payments calculated?** Your annuity payment amount is based on:

- (a) The original purchase price;
- (b) Your age;
- (c) The age of your joint annuitant, if any;
- (d) Assumptions about life expectancy;
- (e) The survivorship percentage you select on a joint annuity;
- (f) Anticipated investment returns; and
- (g) The specific features of the annuity you select, such as, but not limited to, COLAs or refunds of any undistributed balance upon death.

(4) **May I change my mind after I purchase an annuity?** Your contract will specify a period of time in which you can rescind your decision to purchase the annuity. Once the rescission period expires, your decision is irrevocable.

(5) **May I change the terms of the annuity after the rescission period expires?** You may not make any changes after the rescission period unless your annuity contract explicitly states otherwise. Some policies allow you to make changes in specific circumstances. For instance, you may make changes to an annuity purchased through the Washington state investment board investment program only as follows:

(a) If you name someone other than your spouse as the joint annuitant, you may convert to a single life annuity at any time after your payments begin. This option may only be used once and is irrevocable.

(b) If you marry after purchasing a single life annuity, you may convert to a joint life annuity and name your new spouse as survivor, provided that:

(i) Your monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made during a one-year window on or after the date of the first anniversary and before the second anniversary of your marriage; and

(iii) You provide satisfactory proof of your new marriage and your new spouse's birth date. This option may only be used once and is irrevocable.

(6) **What are the tax consequences of a life annuity?**

(a) You, your joint annuitant or your beneficiary may be liable for federal and/or state taxes on payments from your annuity in the year in which they are received. You will receive an annual statement indicating the taxable portion of your annuity payments.

(b) If you do not submit a tax withholding Form W-4P to the department before your first payment, taxes will be withheld according to Internal Revenue Service requirements, using a filing status of married with three exemptions.

(c) The department does not:

(i) Guarantee that payments should or should not be designated as exempt from federal income tax;

(ii) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(iii) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(iv) Assume any liability for your compliance with the Internal Revenue Code.

(7) **How do I purchase a life annuity?**

(a) The forms required to purchase an annuity and the applicable directions are available on the department's web site or upon request from the department, and include:

(i) Plan 3 Request for Payment of Defined Contributions Funds Form;

(ii) Plan 3 Annuity Payment Request Form;

(iii) Spousal consent form, if married;

(iv) Proof of your birth date;

(v) Proof of your joint annuitant's birth date, if applicable; and

(vi) Tax withholding Form W-4P.

(b) You may transfer funds from one investment program to the other in order to have sufficient funds in the appropriate investment program to cover the cost of the annuity purchase.

(8) **What if there is an error in my contract?** Carefully examine your contract upon receipt. If there is an error or omission, you must report the error or omission immediately according to the instructions in your contract.

[Statutory Authority: RCW 41.50.050(5) and 41.50.088. 05-24-050, § 415-111-320, filed 12/1/05, effective 1/1/06.]

## Chapter 415-112 WAC TEACHERS' RETIREMENT SYSTEM

### WAC

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415-112-4603	Are performance bonuses earnable compensation?		
415-112-4604	Is compensation applied toward cafeteria plans earnable compensation?		
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415-112-4608	Is severance pay earnable compensation?		
415-112-4609	Are payroll deductions earnable compensation?	415-112-445	TRS reportable compensation table. [Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 03-06-042, § 415-112-445, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-112-445, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-445, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).
415-112-471	Is compensation reported for legislative leave?		
415-112-473	Is paid leave, which is not earned over time, earnable compensation?	415-112-450	What compensation can be reported? [Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-450, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).
415-112-475	Is the pay I receive from my employer when I am on union leave earnable compensation?		
415-112-477	Are payments for reinstatement or payment instead of reinstatement earnable compensation?	415-112-460	Payments for services rendered. [Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-460, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-460, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).
415-112-480	Are fringe benefits earnable compensation?		
415-112-482	Are disability insurance or workers' compensation payments earnable compensation?	415-112-4605	Leave payments earned over time. [Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-4605, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-4605, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
415-112-485	Are payments that are outside my employer's legal authority earnable compensation?		
415-112-487	Are optional payments considered earnable compensation?	415-112-470	Payments not for services rendered. [Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-470, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).
415-112-489	Are reimbursements for business expenses earnable compensation?		
415-112-490	Is a retirement bonus or incentive earnable compensation?	415-112-483	Workers' compensation. [Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-483, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
415-112-500	Do I qualify for retirement from Plan 1?		
415-112-501	Do I qualify for retirement from Plan 2?		
415-112-502	Do I qualify for retirement from Plan 3?		
415-112-504	What are the benefit options for Plan 1 members?	415-112-491	Severance pay not earned over time—Contract buy out. [Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-491, filed 1/6/97, effective 2/6/97.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
415-112-505	What are the benefit options for Plan 2 and 3 members?		
415-112-507	How do I apply for retirement benefits?	415-112-550	Peace Corps volunteers not employed in public education. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-550, filed 2/15/78. Formerly WAC 462-28-045.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
415-112-523	How does the department calculate my retirement allowance?		
415-112-541	How will returning to work affect my TRS Plan 1 monthly pension?	415-112-710	When are survivor benefits payable? [Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-710, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-710, filed 2/15/78. Formerly WAC 462-36-020.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
415-112-544	How does the department calculate the retirement allowance of a TRS Plan 2 or Plan 3 member who retires, reenters TRS membership, and then retires again?		
415-112-610	What temporary disability benefits are due upon death of a member?	415-112-725	Married member's benefit selection—Spousal consent required. [Statutory Authority: RCW 41.50.050(5), 41.32.530(2), 41.32.785(2), 41.32.851(2). 02-03-120, § 415-112-725, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-725, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-112-725, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-016, § 415-112-725, filed 1/7/91, effective 2/7/91.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
415-112-620	When will my disability retirement allowances begin to accrue?		
415-112-630	How will returning to work affect my Plan 1 disability retirement benefits?	415-112-727	Retirement benefit options. [Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. 01-10-045, § 415-112-727, filed 4/26/01, effective 6/1/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-727, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050(5).
415-112-700	How is "dependent" defined for determining Plan 1 beneficiary rights?		
415-112-705	How do I designate a beneficiary, and who will receive a distribution if I die before retirement?		
415-112-820	What is a bona fide position for purposes of WAC 415-112-810?		
<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>			
415-112-020	Public records. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-020, filed 2/15/78. Formerly WAC 462-05-001.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).		
415-112-100	Minimum requirement for membership. [Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-100, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-100, filed 2/15/78. Formerly WAC 462-16-010.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).		
415-112-135	Can I be a member if I work as an educational staff associate? [Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-135, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-135, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-135, filed 7/25/95, effective 8/25/95.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).		
415-112-310	Civilian Conservation Corps service. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-310, filed 2/15/78. Formerly WAC 462-20-065.] Repealed by 05-12-042, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5).		

- 050.99-14-008, § 415-112-727, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.-460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-112-727, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-016, § 415-112-727, filed 1/7/91, effective 2/7/91.] Repealed by 05-23-062, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5).
- 415-112-800 Scope. [Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-800, filed 6/24/99, effective 7/25/99. Statutory Authority: Chapter 41.32 RCW as amended by 1987 c 265. 87-20-082 (Order 87-09), § 415-112-800, filed 10/7/87.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
- 415-112-840 Actuarial recomputation of retirement allowance upon retirement following reemployment. [Statutory Authority: RCW 41.50.050. 94-09-040, § 415-112-840, filed 4/19/94, effective 5/20/94.] Repealed by 05-12-043, filed 5/25/05, effective 6/25/05.
- 415-112-850 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors. [Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-112-850, filed 5/5/94, effective 6/5/94.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).
- 415-112-920 TRS Plan 3 defined benefit retirement eligibility. [Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-920, filed 4/21/00, effective 5/22/00.] Repealed by 05-12-108, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5).

**WAC 415-112-015 Definitions.** All definitions in RCW 41.32.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.32 RCW are defined in this chapter.

(1) **Accrual date** means the first date from which a member's or beneficiary's benefit is calculated. See WAC 415-112-520, RCW 41.32.795 and 41.32.855.

(2) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(3) **Dual member** means a person who:

(a) Is or becomes a member of a retirement system, as defined in RCW 41.50.030 or 41.54.010(6), on or after July 1, 1988;

(b) Has been a member of one or more other systems; and

(c) Has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or 41.54.010(6). See WAC 415-113-041.

(4) **Ineligible position** means a position that does not meet the requirements of an eligible position as stated in RCW 41.32.010(37).

(5) **Pension benefit** means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers.

(6) **Public educational institution** means a school district, the state school for the deaf, the state school for the

blind, educational service districts, institutions of higher education, or community or technical colleges.

(7)(a) **Public school** as defined in RCW 41.32.010 includes school districts, educational service districts, the state school for the deaf, and the state school for the blind but does not include the office of the superintendent of public instruction.

(b) As applied to TRS employers other than those listed in (a) of this subsection, "public school" means an institution, fifty percent or more of whose employees are "qualified to teach," whose primary function is to educate students. See subsection (8) of this section.

(8) **Qualified to teach** as used under RCW 41.32.-010(29) means:

(a) Having a valid certificate issued by the office of the superintendent of public instruction pursuant to WAC 180-79A-140;

(b) Having a valid permit to teach issued by a lawful authority of this state pursuant to WAC 180-79A-128; or

(c) Being employed under a contract to teach with an institution of higher education as defined in RCW 28B.10.-016.

(9) **Service in an administrative or supervisory capacity** as used under RCW 41.32.010 and in this chapter:

(a) Means:

(i) Service in a managerial role relating to the administration of a public school; or

(ii) Service involving the exercise of direction over employees of the public school.

(b) Includes, but is not limited to, service as: Principal, assistant principal, superintendent, assistant superintendent, personnel manager and business manager.

(10) **Spousal consent** requires written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on the retirement application, duly executed and filed with the department, constitutes "written evidence."

(11) **System acronyms** used in this chapter are defined as follows:

- "PERS" means the public employees' retirement system.

- "SERS" means the school employees' retirement system.

- "TRS" means the teachers' retirement system.

[Statutory Authority: RCW 41.50.050(5), 41.32.010 and chapter 41.32 RCW. 05-12-042, § 415-112-015, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5). 04-21-080, § 415-112-015, filed 10/20/04, effective 11/20/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-015, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-015, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-112-015, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.32.345 and 41.50.050. 93-20-021, § 415-112-015, filed 9/24/93, effective 10/25/93.]

**WAC 415-112-119 Purpose and scope of eligibility rules.** WAC 415-112-120 through 415-112-156 codifies the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in TRS Plans 1, 2 and 3. The department has applied and will

apply these rules to determine eligibility for membership occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-042, § 415-112-119, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-119, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-120 What is the definition of a "teacher"?** Only teachers are eligible to establish membership in TRS.

(1) A teacher is a person who:

(a) Is qualified to teach under WAC 415-112-015(8); and is employed by a public school in an instructional, administrative, or supervisory capacity; or

(b) Otherwise meets the criteria in RCW 41.32.010(29).

(2) For example, persons employed in the following positions are included in the definition of teacher:

(a) Classroom teacher;

(b) Superintendent and assistant superintendent;

(c) Principal and assistant principal;

(d) Educational staff associate (see WAC 415-112-122);

(e) School librarian;

(f) Program administrator;

(g) School doctor.

(3) For example, persons employed in the following positions are not included in the definition of teacher:

(a) Custodian, bus driver, or cafeteria worker;

(b) Library technician;

(c) Administrative assistant or payroll clerk.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(29). 05-12-042, § 415-112-120, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-120, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-122 Am I eligible for TRS membership if I am an educational staff associate?** (1) For the purposes of this chapter, you are considered a teacher and are eligible for TRS membership if you:

(a) Possess a valid educational staff associate certificate issued by the office of the superintendent of public instruction under chapter 180-79A WAC; and

(b) Serve in an educational staff associate position in a public school consistent with subsection (2) of this section.

(2) Educational staff associate positions include, but are not limited to: Communications disorder specialist, occupational therapist, physical therapist, reading resource technician, school counselor, school nurse, school psychologist, school social worker and school librarian. Educational staff associate positions do not include positions such as custodian, groundskeeper, bus driver, cafeteria worker, library technician, administrative assistant, payroll clerk or any other position that does not require service in an instructional, administrative or supervisory capacity.

(3) If you established service credit in PERS prior to June 7, 1984, in an educational staff associate position, and were employed as such on or after June 7, 1984, you may transfer your membership to TRS within the time limits established in RCW 41.32.032.

(4) If you were enrolled in PERS prior to June 7, 1984, based on employment as an educational staff associate, and were converted to SERS membership under RCW 41.40.750,

you may transfer your membership to TRS within the time limits established in RCW 41.32.032.

[Statutory Authority: RCW 41.50.050(5) and 41.32.032. 05-12-042, § 415-112-122, filed 5/25/05, effective 6/25/05.]

**WAC 415-112-125 If I am eligible, how can I establish membership?** If you are a teacher as defined in WAC 415-112-120 and meet the conditions in the following table, you established TRS membership. Your plan status depends upon the date you established membership, as indicated in the following table:

Period of Service	Type of Employment	Plan
Prior to 10/01/77 <sup>1/</sup>	(1) You were mandated into membership, if: (a) You were contracted to teach full time, as defined in RCW 41.32.240; and (b) You were employed for ninety calendar days. (2) If you were employed less than full time, you were a member if you: (a) Worked the equivalent of ninety or more full-time days <sup>2/</sup> during a fiscal year; and (b) Established membership under RCW 41.32.240 prior to 10/01/77.	Plan 1
10/01/77 through 06/06/90	(1) If you were contracted to teach full time, you were required to be a member. (2) If you were employed as a substitute teacher or less than full time, you were a member if you: (a) Worked the equivalent of ninety or more full-time days <sup>2/</sup> during a fiscal year; (b) Worked at least ninety hours during one month; and (c) Established membership under RCW 41.32.240.	Plan 2
06/07/90 through 08/31/91	(1) You were a member if you: (a) Were employed in an eligible position as defined in RCW 41.32.010 (37)(a); (b) Worked two consecutive months of ninety hours or more of compensated employment each month during an annual period September through August. (2) If you were a substitute teacher, you were a member if you: (a) Worked two consecutive months of ninety hours or more of compensated employment each month during an annual period September through August; and (b) Established membership under RCW 41.32.013.	Plan 2
09/01/91 through 06/30/96	(1) If you were employed in an eligible position as defined in RCW 41.32.010 (37)(b), you were required to be a member. (2) If you were employed as a substitute teacher, you were a member if you: (a) Worked at least five months of seventy hours or more of compensated employment during an annual period September through August; and (b) Established membership under RCW 41.32.013.	Plan 2
07/01/96	(1) If you were employed in an eligible position as defined in RCW 41.32.010 (37)(b), you were required to be a member. (2) If you were employed as a substitute teacher, you were a member if you: (a) Worked at least five months of seventy hours or more of compensated employment during an annual period September through August; and (b) Established membership under RCW 41.32.013.	Plan 3

<sup>1/</sup> If you previously established Plan 1 membership as detailed above, you may reestablish Plan 1 membership after October 1, 1977.

<sup>2/</sup> The equivalent of a full-time day is the sum of partial days, which, when added together, equal one full-time day.

[Statutory Authority: RCW 41.50.050(5), 41.32.240, 41.32.780, 41.32.835, 41.32.013, 05-12-042, § 415-112-125, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 04-21-080, § 415-112-125, filed 10/20/04, effective 11/20/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-125, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050, 00-10-015, § 415-112-125, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-125, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-130 If I separate from, and then reenter employment, do I continue to participate in TRS?** This section applies to Plan 1, 2 and 3 members who separate employment without retiring.

**(1) As a Plan 1 member:**

(a) If you separate from service without withdrawing contributions, you will participate in Plan 1 again if you become reemployed with a TRS employer, even if you are not working as a teacher as defined in WAC 415-112-120.

(b) If you separate from service and withdraw your contributions, you will reestablish Plan 1 membership only if:

(i) You are a teacher, as defined in WAC 415-112-120, and meet the eligibility requirements in RCW 41.32.240; or

(ii) You are a member of another retirement system and repay your withdrawn contributions as a dual member under portability. See RCW 41.54.020(2).

**(2) As a Plan 2 member:** If you separate from service, you will participate in Plan 2 again if you become reemployed in an eligible TRS position with a TRS employer.

**(3) As a Plan 3 member:** If you separate from service, you will participate in Plan 3 again if you become reemployed in an eligible TRS position with a TRS employer.

[Statutory Authority: RCW 41.50.050(5), 41.32.240, 41.32.780, 41.32.835, 05-12-042, § 415-112-130, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-

112-130, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-130, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050, 95-16-053, § 415-112-130, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-145 When does my status as a TRS member terminate?** (1) Your TRS Plan 1 membership terminates:

(a) When you retire for service or disability;

(b) When you separate from service and withdraw your accumulated contributions; or

(c) Upon your death.

(2) Your TRS Plan 2 membership terminates:

(a) When you retire for service or disability;

(b) When you separate from service and withdraw your accumulated contributions; or

(c) Upon your death.

(3) Your TRS Plan 3 membership terminates:

(a) When you retire for service or disability;

(b) When you separate from service, withdraw your accumulated contributions, and irrevocably waive your one percent defined benefit according to the provisions of WAC 415-112-150; or

(c) Upon your death.

[Statutory Authority: RCW 41.50.050(5), 41.32.500, 41.32.820, 41.32.837, chapter 41.32 RCW. 05-12-042, § 415-112-145, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050, 00-10-015, § 415-112-145, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-145, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-155 If I work concurrently in a TRS position and PERS position, which system will I be in?** (1) If you work concurrently in a TRS and PERS position, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either TRS or PERS according to the following tables:

**Former TRS Plan 1 Members <sup>1/</sup>**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and choose to establish TRS membership under RCW 41.32.240. If you choose to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and choose to establish TRS membership under RCW 41.32.240. If you choose to establish TRS membership, you must choose either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must choose to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

**TRS Plan 1 Members**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must choose either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

**TRS Plan 2 Members**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. <sup>3/</sup>
	A TRS employer and non-TRS employer	You must choose either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

**PERS Members**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only. Your TRS service will not be reported unless you have met the eligibility criteria for TRS membership and choose to either: 1. Have your TRS service reported in PERS for both positions <sup>4/</sup> ; or 2. Establish TRS membership and have your service in both positions reported in TRS. Any previously reported service credit and compensation in PERS will be transferred to TRS.

**PERS Members**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you have met the eligibility criteria for TRS membership and choose to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

**Neither TRS Nor PERS Member**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may choose to establish membership in TRS for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may choose to establish membership in TRS for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

<sup>1/</sup> "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.

<sup>2/</sup> Means during the same time period.

<sup>3/</sup> EXAMPLE: A TRS Plan 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS Plan 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS Plan 2.

EXAMPLE: A TRS Plan 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS Plan 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS Plan 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

<sup>4/</sup> This provision applies retroactively to July 1, 1996.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.32.010 (TRS); RCW 41.40.010 (PERS).

(b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).

(c) "Full time" - RCW 41.32.240.

(d) "Ineligible position" - WAC 415-112-015 (TRS); RCW 41.40.010 (PERS).

(e) "Member" - RCW 41.40.010.

(f) "Membership" - RCW 41.40.023.

(g) "Report" - WAC 415-108-0104.

(h) "Service" - RCW 41.40.010.

[Statutory Authority: RCW 41.50.050(5) and chapters 41.32 and 41.40 RCW. 05-03-001, § 415-112-155, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 41.50.050(5). 04-21-080, § 415-112-155, filed 10/20/04, effective 11/20/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-155, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-155, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-155, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-155, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-240 In TRS Plan 1, do I receive service credit for my first ninety days of service?** In TRS Plan 1, the service you provide during the ninety days of service

required to establish membership after July 1, 1964, qualifies as creditable service after you establish membership.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(26). 05-12-042, § 415-112-240, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-240, filed 2/15/78. Formerly WAC 462-20-025.]

**WAC 415-112-250 Will I receive service credit for leave with pay? (1) Plan 1 members:** If you are otherwise eligible, you will receive service credit for any time you were on official leave from your position on or after July 1, 1960, provided that:

(a) You were listed as employed by your employer; and

(b) You were receiving compensation from your employer for the time of your leave.

(2) **Plan 2 members:** You may receive service credit in accordance with RCW 41.32.810.

(3) **Plan 3 members:** You may receive service credit in accordance with RCW 41.32.865.

[Statutory Authority: RCW 41.50.050(5), 41.32.267, 41.32.810, 41.32.865. 05-12-042, § 415-112-250, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.32.267, 41.32.810, 41.32.850. 02-03-120, § 415-112-250, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-250, filed 2/15/78. Formerly WAC 462-20-030.]

**WAC 415-112-260 How is service credit evaluated for service in higher institutions?** Service credit for teaching in public higher educational institutions is evaluated according to RCW 41.32.270 (Plan 1) and RCW 41.32.010 (26)(b) (Plans 2 and 3).

[Statutory Authority: RCW 41.50.050(5), 41.32.270, 41.32.010(26). 05-12-042, § 415-112-260, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-260, filed 2/15/78. Formerly WAC 462-20-035.]

**WAC 415-112-270 In TRS Plan 1, may I receive service credit for professional preparation?** As a TRS Plan 1 member, you may be eligible for service credit for additional study at an institution of higher learning or a commercial or technical school where the courses supplement your professional preparation.

The department considers thirty-six quarter hours or twenty-four semester hours of credit, or the equivalent, as one year of service credit. Fewer academic credits may be converted into a fraction of a year of service credit.

[Statutory Authority: RCW 41.50.050(5), 41.32.330, 05-12-042, § 415-112-270, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050, 99-14-008, § 415-112-270, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-270, filed 2/15/78. Formerly WAC 462-20-040.]

**WAC 415-112-290 May I purchase service credit for out-of-state teaching? (1) Do I qualify to purchase service credit for out-of-state teaching?**

(a) **Plan 1.** If you are a Plan 1 member, you may establish service credit for teaching out-of-state, which includes teaching out of the country, only if:

(i) You were on an official leave of absence granted by your employer when you provided the service; and

(ii) You returned to public school service in Washington state.

(b) **Plans 2 and 3.** If you are a Plan 2 or 3 member, you may not purchase service credit for out-of-state teaching.

(2) **As a Plan 1 member, how do I apply to purchase service credit for out-of-state teaching?** To establish such service credit, you must submit the following to the department within the time limits set in RCW 41.32.310:

(a) Proof of your out-of-state service;

(b) Proof of your official leave of absence; and

(c) Payment of contributions.

(3) **What is the maximum amount of service credit I may purchase?** If you meet the requirements in this section, you may establish a maximum of four years of service credit for teaching out-of-state. Except that, at the time of retirement, you may not have more years of service credit for out-of-state teaching than for Washington state service, unless you established the out-of-state service credit prior to July 2, 1947.

[Statutory Authority: RCW 41.50.050(5) and 41.32.300. 05-12-042, § 415-112-290, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050, 99-14-008, § 415-112-290, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-290, filed 2/15/78. Formerly WAC 462-20-055.]

**WAC 415-112-300 What types of service do not qualify for TRS service credit?** Service credit is not earned for service:

- (1) With the National Red Cross organization;
- (2) As a teacher or educational advisor in the Civilian Conservation Corps camps; or
- (3) As a Peace Corps volunteer.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-042, § 415-112-300, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-300, filed 2/15/78. Formerly WAC 462-20-060.]

**WAC 415-112-401 What types of payments are considered earnable compensation?** The following table indicates whether certain types of payments are earnable compensation under TRS Plan 1, 2 or 3 and provides a cross-reference to the specific WAC.

Type of Payment	TRS 1 Earnable Compensation?	TRS 2/3 Earnable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-112-415	No - WAC 415-112-415
Base Contract	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Car Allowances	No - WAC 415-112-41301 <sup>1</sup>	No - WAC 415-112-41301
Cafeteria Plans	Yes - WAC 415-112-4604	Yes - WAC 415-112-4604
Deferred Wages	Yes - WAC 415-112-4609	Yes - WAC 415-112-4609
Disability Payments	No - WAC 415-112-482	No - WAC 415-112-482
Employer Provided Vehicle	No - WAC 415-112-413 <sup>2</sup>	No - WAC 415-112-413
Employer Taxes/Contributions	No - WAC 415-112-4609	No - WAC 415-112-4609
Evening/Summer School	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Extracurricular Contracts	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Fringe Benefits, including insurance	No - WAC 415-112-480	No - WAC 415-112-480
Illegal Payments	No - WAC 415-112-485	No - WAC 415-112-485
Legislative Leave	Yes - WAC 415-112-471	Yes - WAC 415-112-471
Longevity/Education Attainment Pay	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
National Board of Professional Teaching Standards Certification Bonus	No - WAC 415-112-4602	No - WAC 415-112-4602
Nonmoney Maintenance	Yes - WAC 415-112-412 <sup>3</sup>	No - WAC 415-112-412
Optional Payments	No - WAC 415-112-487	No - WAC 415-112-487
Performance Bonuses	Yes - WAC 415-112-4603	Yes - WAC 415-112-4603
Retroactive Salary Increase	Yes - WAC 415-112-4607	Yes - WAC 415-112-4607
Reimbursements	No - WAC 415-112-489	No - WAC 415-112-489
Reinstatement Payments	Yes - WAC 415-112-477	Yes - WAC 415-112-477
Retirement or Termination Bonuses	No - WAC 415-112-490	No - WAC 415-112-490
Severance Pay - Earned Over Time	Yes - WAC 415-112-4608	No - WAC 415-112-4608
Severance Pay - Not Earned Over Time	No - WAC 415-112-4608	No - WAC 415-112-4608
Sick Leave Cash Outs	No - WAC 415-112-417	No - WAC 415-112-417
Supplemental Contracts	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Time Off with Pay	Yes - WAC 415-112-473	Yes - WAC 415-112-473



Type of Payment	TRS 1 Earnable Compensation?	TRS 2/3 Earnable Compensation?
Union Leave <sup>4</sup>	Yes - WAC 415-112-475	Yes - WAC 415-112-475
Workers' Compensation	No - WAC 415-112-482	No - WAC 415-112-482

<sup>1</sup>A portion of the value of an employer car allowance may be reportable in Plan 1 only. See WAC 415-112-41301.

<sup>2</sup>A portion of the value of an employer provided vehicle may be reportable in Plan 1 only. See WAC 415-112-413.

<sup>3</sup>A portion of the value of nonmoney maintenance provided may be reportable in Plan 1 only. See WAC 415-112-412.

<sup>4</sup>Only specific types of union leave are reportable. See WAC 415-112-475.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-042, § 415-112-401, filed 5/25/05, effective 6/25/05.]

### **WAC 415-112-402 What is earnable compensation?**

(1) The department determines whether payments to an employee are earnable compensation based on the nature of the payment, **not** the name of the payment. The department considers the reason for the payment and whether the reason brings the payment within the statutory definition of earnable compensation.

(2) Earnable compensation must meet the definition in RCW 41.32.010(10). It must:

(a) Be paid by a TRS employer to an employee as salary or wages for services provided; or

(b) Qualify as earnable compensation under WAC 415-112-471 through 415-112-477, even though it was not paid for services provided. See RCW 41.32.010(10), 41.32.267, 41.32.810 and 41.32.865.

(3) In certain cases you may establish service credit for out-of-state teaching, military service, and professional preparation. However, any compensation you may have received for these periods is excluded from earnable compensation because it is not salary or wages from a TRS employer.

(4) Some types of compensation are defined as earnable compensation in one plan and not in another.

(5) An employer must report all of an employee's earnable compensation to the department. An employer must report compensation for the month in which it was earned. Compensation is earned when the service is provided, rather than when payment is made.

**Example:** A member is paid in July for work performed during June. The employer must report the compensation to the department as "June earnings."

[Statutory Authority: RCW 41.50.050(5), 41.32.010(10). 05-12-042, § 415-112-402, filed 5/25/05, effective 6/25/05.]

**WAC 415-112-412 Are nonmoney payments from my employer earnable compensation?** (1) Nonmoney maintenance compensation, as defined in this section:

(a) Is earnable compensation to the extent authorized by this section, for Plan 1 members; and

(b) Is **not** earnable compensation for Plan 2 and 3 members.

(2) Nonmoney maintenance compensation is compensation legally provided to you in a form other than money. For example, nonmoney maintenance compensation may include the provision of materials such as living quarters, food,

board, equipment, clothing, laundry, transportation, fuel, and utilities. To be considered nonmoney maintenance compensation, the materials must be provided for your personal use and/or the personal use of your dependents, not for a business use. The materials are **not** nonmoney maintenance compensation if:

(a) You use them solely in connection with your employer's business; or

(b) They are provided in lieu of reimbursement for your business expenses.

(3) To prove that the provision of materials constitutes nonmoney maintenance compensation:

(a) Your employer must substantiate by adequate records or other sufficient corroborating evidence that the materials were provided to you for your personal use as payment for your services to the employer.

(b) Your employer must substantiate that the fair market value of the materials provided is includable in your taxable income for federal income tax purposes.

(c) You may provide corroborating evidence to the department. Written documentation prepared at or near the time the materials were provided is generally preferred.

(d) In the absence of clear proof, the department will presume that employer-provided materials were not nonmoney maintenance compensation.

(4) If you are a member of TRS Plan 1, your employer must report nonmoney maintenance compensation to the department as earnable compensation. The amount reported as earnable compensation is the fair market value of materials legally provided by your employer. To substantiate the value of nonmoney maintenance compensation:

(a) Your employer must establish and regularly update a written schedule reflecting the monthly fair market value of the materials provided. Typically, the fair market value would be the cost of the item if it were acquired in a purchase or lease transaction. Your employer must be able to substantiate the accuracy of this schedule with adequate records.

(b) If you pay any amount to your employer in order to own or use the materials, your employer must report as earnable compensation the amount by which the fair market value exceeds the amount of your payment.

[Statutory Authority: RCW 41.50.050(5), 41.32.010(10). 05-12-042, § 415-112-412, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5) and 41.32.010 (10)(b). 02-03-120, § 415-112-412, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 95-22-006, § 415-112-412, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.32.010(11) and 41.32.160. 87-17-060 (Order DRS 87-07), § 415-112-412, filed 8/19/87.]

**WAC 415-112-41301 Are vehicle allowances earnable compensation?** (1)(a) **Plan 1.** Vehicle allowances may be earnable compensation for Plan 1 members according to this section.

(b) **Plans 2 and 3.** Vehicle allowances are **not** earnable compensation for members of Plans 2 and 3. Subsections (2) through (5) of this section apply to Plan 1 members only.

(2) For TRS Plan 1:

(a) A vehicle allowance is not earnable compensation if it is received in lieu of expenses you incur or expect to incur in using your own vehicle for business purposes.

(b) A vehicle allowance qualifies as earnable compensation to the extent that it exceeds your actual expenses. For

instance, if you receive both a vehicle allowance and separate reimbursement for vehicle expenses each time you use a privately owned vehicle for business purposes, the vehicle allowance is earnable compensation.

(3) To prove that your vehicle allowance exceeded your actual expenses, your employer must maintain ongoing monthly records, documenting:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips;

(c) Your itinerary for each of these trips; and

(d) The amount of the allowance LESS the actual expenses, using IRS methodology. Under the IRS methodology, your actual expenses are the miles you drove multiplied by the IRS rate.

(i) The miles you drove are the number of miles you drove a privately owned vehicle for business purposes during the month.

(ii) "IRS rate" means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(4) If a vehicle allowance exceeds your actual expenses, your employer must report the excess, calculated in subsection (3)(d) of this section.

(5) If any part of a vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-41301, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-41301, filed 6/24/99, effective 7/25/99; 95-22-006, § 415-112-41301, filed 10/18/95, effective 11/18/95.]

**WAC 415-112-415 Are cash-outs for annual leave and personal leave included in earnable compensation and/or average final compensation?** (1)(a) **Plan 1.** Under RCW 41.32.010 (10)(a), cash-outs for up to two hundred forty hours of unused annual leave are included in earnable compensation<sup>1</sup> for Plan 1 members according to this section.

(b) **Plans 2 and 3.** Under RCW 41.32.010 (10)(b), cash-outs for unused annual leave and personal leave are not earnable compensation in Plans 2 and 3, and are **not** includable in average final compensation. Subsections (2) through (4) of this section apply to Plan 1 members only.

(2) For Plan 1 members, cash-outs for unused annual leave and personal leave may be included in average final compensation only if the leave was earned during the two fiscal years used to calculate your average final compensation under WAC 415-112-430.

(3) The department determines when your cashed-out leave was earned as follows:

(a) You accrue annual leave and personal leave at a prescribed rate, often a certain number of hours per month. Your accrued leave is stored until you use it.

(b) Except as provided in (c) of this subsection, the department applies a "first-in-first-out (FIFO)" methodology to determine what personal leave and annual leave you have used.

**Example:** John has accrued ten days of annual leave. He earned five days in 2000 and five days in 2001. In 2002, John uses five days of annual leave. He

is deemed to have used the five days earned in 2000. The five days earned in 2001 remain unused.

(c) If the employer has a different methodology in place, the department will use the employer's methodology, rather than the FIFO methodology; provided that:

(i) The employer's methodology was clearly documented by a collective bargaining agreement, regulation, charter provision, ordinance, or other comparable written policy statement; and

(ii) The employer's methodology was applied consistently to all employees for all purposes.

(4) For purposes of determining average final compensation and excess compensation, the department will consider the hours of leave in the form in which the leave was earned. If an employer converts one form of leave to another form of leave, the department will disregard the conversion and bill the employer for the amount converted if it meets the definition of excess compensation in RCW 41.50.150.

<sup>1</sup>In certain cases, an employee may cash out personal leave and/or more than two hundred forty hours of annual leave. Although this cash-out is not earnable compensation, it may be used in the calculation of the employee's retirement allowance and the employer will be billed for the excess compensation. See WAC 415-02-140.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-415, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050 and 41.32.010(10). 00-13-001, § 415-112-415, filed 6/7/00, effective 7/8/00. Statutory Authority: RCW 41.50.050. 94-23-049, § 415-112-415, filed 11/10/94, effective 12/11/94. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-112-415, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.32.010(11) and 41.32.160. 87-17-060 (Order DRS 87-07), § 415-112-415, filed 8/19/87.]

**WAC 415-112-417 Are cash-outs for sick leave included in earnable compensation and/or average final compensation?** Cash-outs for unused sick leave are not earnable compensation in TRS Plans 1, 2, or 3, and are not includable in average final compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-417, filed 5/27/05, effective 6/27/05.]

**WAC 415-112-4601 Are contract salary payments earnable compensation?** (1) **Base contract.** Payments authorized under a base contract may be earnable compensation.

(a) Payments made to classroom teachers for the provision of educational services are earnable compensation.

(b) Payments made to administrators and principals for the provision of administrative services are earnable compensation.

(c) Even though salaries are derived from a salary schedule that incorporates experience and educational attainment, to the extent that the salaries are paid for services provided, they are earnable compensation. Both experience and educational attainment are deemed to increase the quality of the service performed. See RCW 28A.405.200.

(d) Payments pursuant to the base contract that are not made in exchange for services performed are not earnable compensation.

(2) **Supplemental contract.** Payments authorized under a supplemental time, responsibility or incentives (TRI) contract may be earnable compensation. RCW 28A.400.200 allows the use of supplemental TRI contracts to compensate an employee for additional time, additional responsibility, or the achievement of stated incentives.

(a) Payments authorized by a supplemental contract for services requiring additional time are earnable compensation. Examples include payments for the provision of educational services during evening or summer school.

(b) Payments authorized by a supplemental contract for services requiring additional responsibility within the regularly scheduled working day are earnable compensation. Examples include payments linked to over enrollment or additional duties.

(c) Payments authorized by a supplemental contract for the achievement of stated incentives are earnable compensation. Examples include meeting performance goals specified by the employer.

(3) **Longevity or educational attainment.** Payments for longevity or educational attainment must be analyzed to determine whether they are paid for services provided. Salaries for all teachers and most administrators are determined by looking at the individual's teaching experience and educational attainment.

(a) A member who receives a salary increase based upon longevity or educational attainment receives a higher salary without working more hours. The higher salary indicates a higher level of service due to greater experience or more education. The payment is therefore a payment for additional service and is earnable compensation.

(b) Simply attaching the label "longevity" to a payment does not guarantee that it will be earnable compensation. If a payment described as a longevity payment is actually based upon some other criteria, such as retirement or notification of intent to retire, the payment may not be reportable.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4601, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4601, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4602 Are bonuses for National Board for Professional Teaching Standards certification earnable compensation?** Bonuses you receive for attaining National Board for Professional Teaching Standards certification are not earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4602, filed 5/27/05, effective 6/27/05.]

**WAC 415-112-4603 Are performance bonuses earnable compensation?** Bonuses for meeting certain performance goals or working under unusual conditions, such as over enrollment, are earnable compensation because they are paid for services provided.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4603, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4603, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4604 Is compensation applied toward cafeteria plans earnable compensation?** Compensation you receive and apply toward a benefit plan under I.R.C. Section 125 may be earnable compensation. If you have an abso-

lute right to receive cash or deferred cash payments instead of the fringe benefit, the payment is earnable compensation. If you have no cash option, the value of the fringe benefit is not earnable compensation. Also see WAC 415-112-480.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4604, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4604, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4607 Are retroactive salary increases earnable compensation?** (1) A retroactive salary increase occurs when your rate of pay is increased and made retroactive to a prior date. You receive a lump sum payment for the increased amount earned during the earlier period.

**Example:** John's salary is \$2000 per month. On April 10, his salary is increased to \$2200 per month. The increase is made retroactive to January 1. On April 25, he receives a lump sum payment of \$600, i.e., the \$200 increase for January, February, and March. In April he also receives a paycheck at the new rate of \$2200.

(2) A lump sum payment received pursuant to certain retroactive salary increases is earnable compensation. See subsection (3) of this section. The payment will be deemed to be earned in the period in which the work was done.

**Example:** When the \$600 payment is reported to the department, John will receive an additional \$200 of earnable compensation for each of January, February, and March.

(3) To qualify as earnable compensation, the retroactive salary increase must be made pursuant to:

(a) An order or conciliation agreement of a court or administrative agency charged with enforcing federal, state, or local statutes, ordinances, or regulations protecting employment rights;

(b) A bona fide settlement of a claim before a court or administrative agency for a retroactive salary increase;

(c) A collective bargaining agreement; or

(d) A legislative enactment.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4607, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4607, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4608 Is severance pay earnable compensation?** (1) **Severance pay earned over time.**

(a) **Plan 1.** Severance pay must be earned over time in the same manner as annual leave or sick leave in order to be deferred compensation for services previously provided and to be reportable in Plan 1. Severance pay is earned over time if the employment contract(s) entered into at the beginning of the period of employment specify that a certain amount of severance pay will be earned in the coming year in consideration for services provided.

**Example:** Mr. Jones is a TRS Plan 1 member employed as a school administrator. Since the beginning of his term of employment with the district, his contract has specified that he will earn one week of severance pay for every year of his employment. The earned severance pay will be paid at the time of his separation. His severance pay is earnable compensation. When Mr. Jones retires,

the two weeks severance pay that he earned during his two highest paid years (i.e., one week per year for two years) will be included in his TRS Plan 1 retirement calculation.

(b) **Plans 2 and 3.** All forms of severance pay are excluded from earnable compensation for Plans 2 and 3 by RCW 41.32.010(10).

(2) **Severance pay that is not earned over time.** Severance pay that is not earned over time is not earned for services provided and is not earnable compensation for Plan 1, 2 or 3.

**Example:** A school administrator and a school district negotiate a termination agreement. In the agreement, the school district agrees to pay the administrator a lump sum payment equal to two months salary as severance pay. The severance payment was not accrued over time in exchange for services provided, and therefore is not earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4608, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-4608, filed 4/21/00, effective 5/22/00; 98-09-059, § 415-112-4608, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-4608, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4609 Are payroll deductions earnable compensation?** Amounts withheld from your salary or wages are earnable compensation. Examples include:

(1) Your employee contributions to TRS (compare WAC 415-112-480 regarding employer contributions);

(2) Amounts withheld for federal income tax purposes; and

(3) Other authorized voluntary deductions, such as the deferred compensation plan or 403(b) plan deferrals.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-4609, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-112-4609, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-4609, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-471 Is compensation reported for legislative leave?** If you take a leave without pay to serve in the legislature, you are entitled to service and earnable compensation credit according to this section.

(1) **Plan 1.** The salary you would have earned in the position from which you took leave of absence is earnable compensation if you serve at least five years in the legislature. Employer contributions are not required on this imputed payment. Employee contributions are required.

(2) **Plans 2 and 3.** You may choose between:

(a) The earnable compensation you would have earned had you not served in the legislature; or

(b) The actual earnable compensation received for service plus the legislative earnable compensation.

If you select option (a), you are responsible for paying the additional employer and employee contributions to the extent the earnable compensation reported is higher than it would have been under (b) of this subsection.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-471, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-471, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-471, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-473 Is paid leave, which is not earned over time, earnable compensation?** If paid leave is not based upon earned leave accumulated over time, the payment is not for services previously provided and is generally not earnable compensation. Exceptions identified in RCW 41.32.267, 41.32.810 and 41.32.865 are reportable, and contributions are due on these payments to the extent they meet both of the following conditions:

(1) The compensation reported is equal to the salary for the position from which you are on leave; and

(2) The payment is received from your employer, not from a third party. Except as provided in WAC 415-112-475, if you receive payment from your employer but your employer is reimbursed for the payment by a third party, the payment is not earnable compensation.

[Statutory Authority: RCW 41.50.050(5), 41.32.267, 41.32.810, 41.32.865. 05-12-108, § 415-112-473, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-473, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-473, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-475 Is the pay I receive from my employer when I am on union leave earnable compensation?** If you take an authorized leave of absence to serve as an elected official of a labor organization and you receive payment from your employer during your leave, the payments may be earnable compensation, even if the union reimburses your employer. To qualify as earnable compensation, the payments must meet the specific conditions in RCW 41.32.267 (Plan 1), RCW 41.32.810 (Plan 2), or RCW 41.32.865 (Plan 3).

[Statutory Authority: RCW 41.50.050(5), 41.32.267, 41.32.810, 41.32.865. 05-12-108, § 415-112-475, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-475, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-475, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-477 Are payments for reinstatement or payment instead of reinstatement earnable compensation?** (1) When you receive payments upon reinstatement or instead of reinstatement, such payments are earnable compensation to the extent they are equivalent to the salary you would have earned by working in your position. RCW 41.32.010 defines these payments as earnable compensation even though they are not payments for services you provided to your employer. The payment will be prorated over the entire period that you were suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of:

(a) The employer;

(b) A school district; or

(c) A court of law.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-477, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-477, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-477, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-480 Are fringe benefits earnable compensation?** Fringe benefits provided by an employer are not a salary or wage, and are not earnable compensation. Fringe benefits include, but are not limited to:

(1) Employer retirement contributions;

(2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or

(3) Any employer payments into a private fund to provide health or welfare benefits for you or your dependents, with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-112-4604.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-480, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 03-06-042, § 415-112-480, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-480, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-482 Are disability insurance or workers' compensation payments earnable compensation?** (1) Disability insurance payments are not earnable compensation, whether the payments come directly from the employer or from an insurance company.

(2) Workers' compensation payments are not earnable compensation.

**Example:** Susan, an employee on unpaid disability leave, submits her workers' compensation payments to her employer. The employer then issues Susan a check for the same amount through the payroll system. Even though the payment may have the appearance of compensation from the employer, it is not a payment for services provided and it is not earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-482, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-482, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-485 Are payments that are outside my employer's legal authority earnable compensation?** Payments made by an employer that are outside the employer's legal authority are not earnable compensation.

**Example:** School districts are prohibited by RCW 28A.400.220 from increasing an employee's salary instead of providing a fringe benefit. If a district increased a person's salary instead of providing a district car, the teacher's increased salary payments would not be earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-485, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-485, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-487 Are optional payments considered earnable compensation?** If you receive an additional payment only on the condition of taking an action other than providing service to your employer, the payment is not earnable compensation.

**Example:** An employer offers to make a contribution to Joe's deferred compensation plan only if Joe agrees to have a portion of his salary deferred. Because Joe does not have a right to receive the contribution based solely on providing service, the payment is not earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-487, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-487, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-489 Are reimbursements for business expenses earnable compensation?** Reimbursements are not earnable compensation. Typical reimbursement payments include mileage reimbursements for use of a private car on employer business, or meal and lodging reimbursements for business trips.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-489, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-489, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-490 Is a retirement bonus or incentive earnable compensation?** A payment made as an incentive to retire or terminate is not a payment for services provided, and is not earnable compensation.

**Example:** A collective bargaining agreement authorizes a school district to pay employees a higher salary during the last two years of employment if the employee gives written notice of his or her intent to retire. Because the payment is in exchange for the agreement to retire and not for services, the payment is not earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010(10). 05-12-108, § 415-112-490, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-490, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-500 Do I qualify for retirement from Plan 1?** You may retire from Plan 1:

(1) At age sixty with a minimum of five years of service. You may not use service credit you purchased for professional preparation or military service to meet the five-year minimum;

(2) At age fifty-five with a minimum of twenty-five years of service; or

(3) At any age with a minimum of thirty years of service. See RCW 41.32.480.

[Statutory Authority: RCW 41.50.050(5) and 41.32.480. 05-12-108, § 415-112-500, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-500, filed 2/15/78. Formerly WAC 462-28-005.]

**WAC 415-112-501 Do I qualify for retirement from Plan 2?** You may retire from Plan 2:

(1) At age sixty-five with a minimum of five years of service;

(2) At age fifty-five with a minimum of twenty years of service, however, your retirement allowance will be actuarially reduced to reflect the difference in the number of years between your age at retirement and age sixty-five; or

(3) At age fifty-five with a minimum of thirty years of service credit. Your defined benefit will be reduced by three percent per year to reflect the difference in the number of years between your age at retirement and age sixty-five.

See RCW 41.32.765.

[Statutory Authority: RCW 41.50.050(5) and 41.32.765. 05-12-108, § 415-112-501, filed 5/27/05, effective 6/27/05.]

**WAC 415-112-502 Do I qualify for retirement from Plan 3?** You may retire from Plan 3:

(1) At age sixty-five with the following amounts of service credit to retire with an unreduced defined benefit:

(a) Ten years of service credit; or

(b) Five years of service credit, including at least twelve service credit months after attaining age fifty-four; or

(c) Five years of TRS Plan 2 service credit earned prior to July 1, 1996, before transferring to Plan 3 under RCW 41.40.750.

(2) At age fifty-five with a minimum of ten years of service credit, however, your defined benefit will be actuarially reduced to reflect the difference in the number of years between your age at retirement and age sixty-five.

(3) At age fifty-five with a minimum of thirty years of service credit. Your defined benefit will be reduced by three percent per year to reflect the difference in the number of years between your age at retirement and age sixty-five.

See RCW 41.32.875.

[Statutory Authority: RCW 41.50.050(5) and 41.32.875. 05-12-108, § 415-112-502, filed 5/27/05, effective 6/27/05.]

**WAC 415-112-504 What are the benefit options for Plan 1 members?** Upon retirement from Plan 1 for service under RCW 41.32.480 or disability under RCW 41.32.550 (1)(c), you must choose to have your retirement allowance paid to you by one of the options described in this section. You may also select an optional supplemental cost-of-living (COLA) adjustment.

(1) **May I withdraw any of my contributions?** You may withdraw some or all of your accumulated contributions as follows:

(a) If you retire according to the provisions of RCW 41.32.498, you may withdraw some or all of your accumulated contributions at the time of retirement. Your monthly retirement allowance will be actuarially reduced according to the amount you withdraw.

(b) If you terminate service due to a disability under the conditions of RCW 41.32.550 (1)(a), you may withdraw all your accumulated contributions in a lump sum payment. You will receive no monthly retirement allowance.

(2) **Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (3)(c) through (e) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

(3) **What are my benefit options?**

(a) **Maximum benefit allowance (no survivor feature).** The department will pay you the maximum benefit allowed by statute. Under this option you will receive a monthly retirement allowance throughout your lifetime. Your monthly allowance will cease upon your death, and any remaining balance of accumulated contributions will be:

(i) Retained by the retirement fund if you retired for service under RCW 41.32.497 or 41.32.498; or

(ii) Paid according to subsection (9) of this section if you retired because of disability and were receiving a monthly retirement allowance under RCW 41.32.550 (1)(c).

(b) **Option one: Standard allowance for service retirement (no survivor feature).** The department will pay

you a monthly retirement allowance throughout your lifetime. Your monthly allowance will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (9) of this section.

(i) This benefit option has a lower monthly allowance than the **maximum benefit allowance** in (a) of this subsection because, with this option, any remaining accumulated contributions will be paid to your beneficiaries upon your death.

(ii) If you are retiring because of disability under RCW 41.32.550 (1)(c), you will not benefit from this option because your beneficiaries will receive any remaining accumulated contributions under the maximum benefit allowance in (a) of this subsection.

(c) **Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

(d) **Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

(e) **Option four: Joint and two-thirds allowance** (available to members retiring on or after January 1, 1996). The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

(4) **Do I need my spouse's consent on the option I choose?** If you are married, you must provide your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.32.530(2). If your survivor beneficiary has been designated by a dissolution order according to subsection (5) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(5) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(6) **What is the supplemental COLA option?** In addition to choosing a retirement benefit option described in subsection (3) of this section, you may choose a supplemental annual COLA. If you select this option, your monthly retirement allowance will be actuarially reduced to offset the cost of this benefit.

(7) **What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death

to the department. The increase will begin accruing the first day of the month following the death.

(a) **Members who retire on or after January 1, 1996:** Your increased monthly allowance will be:

(i) The amount you would have received had you chosen the maximum benefit at the time of retirement;

(ii) Minus any reduction in the maximum allowance resulting from a withdrawal of contributions;

(iii) Plus any COLAs you received prior to your survivor beneficiary's death, based on your original option selection.

**Example:**

Lucinda retires from TRS Plan 1 in 1996. Lucinda withdraws some of her contributions, which actuarially reduces her maximum monthly allowance from \$2,000 to \$1,963.86. She chooses a benefit option with a survivor feature, and names Garth, her husband, as her survivor beneficiary. As a result, Lucinda's monthly allowance is further reduced from \$1,963.86 to \$1,846.03. Garth dies in January 2001. Lucinda's monthly allowance will increase to \$1,963.86, the amount she would have received had she chosen the maximum benefit option (after reduction for her withdrawals). The total amount of the COLAs she received (based on her prior monthly allowance) will be added to the \$1,963.86.

(b) **Members who retired before January 1, 1996:** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.32.530(3).

(8) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the maximum benefit option or the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

(9) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the annuity payments paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid according to this subsection.

(i) Except as provided in (a)(ii) of this subsection, any remaining balance will be paid to the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you retired for service and chose the maximum benefit option, any remaining balance will be retained by the retirement fund.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid to the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(10) For more information, see RCW 41.32.530 and 41.32.550.

[Statutory Authority: RCW 41.50.050(5), 41.32.530, 41.32.550. 05-23-062, § 415-112-504, filed 11/14/05, effective 12/15/05.]

**WAC 415-112-505 What are the benefit options for Plan 2 and 3 members?** Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 415-112-790 or 415-112-880, you must choose to have the defined benefit portion of your retirement allowance paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (2)(c) through (e) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

(2) **What are my benefit options?**

(a) **Option one: Standard allowance for service retirement (no survivor feature).** The department will pay you a monthly retirement allowance throughout your lifetime. Your monthly allowance will cease upon your death.

(b) **Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

(c) **Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

(d) **Option four: Joint and two-thirds allowance** (available to members retiring on or after January 1, 1996). The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

(3) **Do I need my spouse's consent on the option I choose?** If you are married, you must submit your spouse's notarized signature indicating consent to the retirement option you selected. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2). If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.

(a) **Members who retire on or after January 1, 1996:** Your increased monthly allowance will be:

(i) The amount you would have received had you chosen the standard allowance option; plus

(ii) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.

**Example:**

Agnes retires from TRS Plan 2 in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes' monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2001. Agnes' monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
Total COLA's				191.05
Original Monthly Allowance				+ Total COLA's
\$2000				+ \$191.05
				= \$2,191.05*

\* In the future, Agnes' COLA will be based on her increased monthly allowance.

(b) **Members who retired before January 1, 1996:** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.32.785(3).

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement allowance. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.



(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

[Statutory Authority: RCW 41.50.050(5), 41.32.785, 41.32.851, 41.32.790, 05-23-062, § 415-112-505, filed 11/14/05, effective 12/15/05.]

**WAC 415-112-507 How do I apply for retirement benefits?** To apply for retirement benefits, you must submit the following to the department:

(1) A completed, signed, and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's notarized signature indicating consent to the retirement option you selected. See WAC 415-112-015(10).

(i) If you are married and you do not provide spousal consent, the department will pay you a joint and one-half survivor benefit allowance and record your spouse as the survivor beneficiary as required by RCW 41.32.530(2), 41.32.785(2), and 41.32.851(2).

(ii) If you are married, but have had a prior dissolution decree on file with the department designating a survivor beneficiary under RCW 41.50.790, spousal consent is not required. The dissolution decree must have been filed at least thirty days prior to your retirement;

(2) Evidence of your birth date, such as a certified copy of your birth certificate, passport, naturalization certificate, certificate of armed services record U.S. DD 214, or other documentation acceptable to the department; and

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-108, § 415-112-507, filed 5/27/05, effective 6/27/05.]

**WAC 415-112-523 How does the department calculate my retirement allowance?** (1) When you apply for retirement, you will begin to receive a provisional retirement allowance.

(a) The department will calculate the provisional allowance based on:

(i) The data for service credit and earnable compensation in the department's system at the time it is calculated;

(ii) Projections of your salary for periods that have not yet been reported by your employer.

(b) The department will pay you the provisional allowance until your actual retirement allowance has been calculated.

(2) To compute your actual allowance, the department must receive a final compensation report from your employer.

The department may also require any of the following from your employer:

(a) Cash-out information (Plan 1 only).

(b) Earnings history.

(c) Copies of your employment contract(s).

(d) Copies of your employer's compensation policies.

(3) The department will make a final calculation of your actual retirement allowance by making a final determination

of your service credit and average final compensation and by applying the correct formula to these values. Your actual retirement allowance may be higher or lower than your provisional allowance.

(4) If the amount of your actual allowance is different from your provisional allowance, the department will make the necessary adjustments.

(a) If you were underpaid, the department will pay you a lump sum payment equal to the difference of the total provisional payments you received and the total you would have received based on your actual allowance.

(b) If you were overpaid, the department will recover the overpayment either through a lump sum payment, monthly installment payments, or through an actuarial reduction of your actual allowance.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-108, § 415-112-523, filed 5/27/05, effective 6/27/05.]

**WAC 415-112-541 How will returning to work affect my TRS Plan 1 monthly pension?** This section implements RCW 41.32.570, which limits employment for TRS Plan 1 retirees with public educational institutions to fifteen hundred hours regardless of the nature of service.

(1) You may return to any type of service with a public education institution for up to fifteen hundred hours per fiscal year as defined in RCW 41.32.010(12) without affecting your TRS Plan 1 monthly pension under RCW 41.32.570, provided you have been retired from service for one full calendar month (see WAC 415-112-520 and 415-112-525 for more information).

(a) Your employer must notify the department when you return to work. Your employer must report hours and compensation.

(b) If you are a TRS Plan 1 retiree and you work more than fifteen hundred hours during a fiscal year, the department will suspend your monthly pension. The pension is suspended until the first of the next fiscal year or termination of your employment, whichever comes first.

(c) The TRS Plan 1 limits will be applied to retirees from both TRS Plan 1 and a Plan 2 or 3 in another pension plan.

(d) The TRS Plan 1 limits will be applied to retirees from both TRS Plan 1 and PERS Plan 1.

(e) If you are a TRS Plan 1 retiree working for a public education institution as a bona fide independent contractor as determined under WAC 415-02-110, you are not considered an employee of the institution and are not subject to the work limitations.

(2) If the department suspends your benefit because of your reemployment, the department will reinstate the original amount of your pension, less deductions to recover any overpayment, effective the day following your termination of employment, or at the beginning of the next fiscal year, whichever comes first.

(3) You must repay any monthly pension payment that you receive in excess of the amounts allowed under this section.

(4) You may choose to return to membership if you are employed by a public education institution and are otherwise eligible. Membership will be prospective from the month in which you opt into membership.

(5) Defined terms used. Definitions for the following term used in this section may be found in the section listed.

Public educational institution: WAC 415-112-015.

[Statutory Authority: RCW 41.50.050(5) and 41.32.570. 05-03-006, § 415-112-541, filed 1/6/05, effective 2/6/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-541, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-112-541, filed 12/28/01, effective 1/1/02.]

**WAC 415-112-544 How does the department calculate the retirement allowance of a TRS Plan 2 or Plan 3 member who retires, reenters TRS membership, and then retires again?** This rule establishes a method to actuarially recompute your defined benefit retirement allowance if you are a Plan 2 or Plan 3 member who retires, reenters TRS membership causing your retirement allowance to stop, and then retires again.

(1) **If you previously retired before age sixty-five**, the department will:

(a) Recompute your retirement allowance pursuant to RCW 41.32.760 (Plan 2) or 41.32.840 (Plan 3) using:

(i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(ii) Any increase in your average final compensation resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

(i) Based on the present value of the retirement allowance payments you received during your initial retirement;

(ii) To reflect the difference in the number of years between your current age and the attainment of age sixty-five, if applicable; and

(iii) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-112-493.

(2) **If you previously retired at or after age sixty-five**, the department will recompute your retirement allowance pursuant to RCW 41.32.760 (Plan 2) or 41.32.840 (Plan 3) and include any additional service credit you earned and any increase in your average final compensation resulting from your reentry into membership. The department will actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-112-493.

(3) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

[Statutory Authority: RCW 41.50.050(5), 41.32.800, 41.32.860, 41.32.802, 41.32.862. 05-12-043, § 415-112-544, filed 5/25/05, effective 6/25/05.]

**WAC 415-112-610 What temporary disability benefits are due upon death of a member?** When a member applies for temporary disability benefits, the member may designate a beneficiary. Any temporary disability benefits that have accrued and are payable upon the death of the member will be paid to the deceased member's designated beneficiary or to the member's estate if there is no designated beneficiary.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-108, § 415-112-610, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-610, filed 2/15/78. Formerly WAC 462-32-020.]

**WAC 415-112-620 When will my disability retirement allowances begin to accrue?** (1) If you qualify for a disability retirement allowance without first qualifying for temporary disability benefits, your retirement allowance will start according to the provisions governing service retirement in WAC 415-112-520.

(2) If you qualify for a disability retirement allowance after having first qualified for TRS Plan 1 temporary disability benefits, your disability retirement allowance will start the first of the month following termination of your temporary disability allowance, and will otherwise be consistent with WAC 415-112-520, which governs service retirement.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 05-12-108, § 415-112-620, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-620, filed 2/15/78. Formerly WAC 462-32-050.]

**WAC 415-112-630 How will returning to work affect my Plan 1 disability retirement benefits?** The provisions of RCW 41.32.570 with regard to service in public education by a retired teacher applies equally to TRS Plan 1 members retired for disability.

[Statutory Authority: RCW 41.50.050(5) and 41.32.570. 05-12-108, § 415-112-630, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-630, filed 2/15/78. Formerly WAC 462-32-060.]

**WAC 415-112-700 How is "dependent" defined for determining Plan 1 beneficiary rights?** (1) For purposes of TRS Plan 1 death benefits under RCW 41.32.520, a dependent must be a dependent as defined in 26 U.S.C. 152.

(2) The department must receive proof that the beneficiary stands in the necessary relationship to the member, and that either:

(a) The member had provided over half of the beneficiary's financial support continuously prior to death and at the time of the member's death; or

(b) The beneficiary otherwise meets the definition of beneficiary set forth in 26 U.S.C. 152.

(3) Financial support includes the cost of food, clothing, shelter, education, medical and dental expenses, and other similar expenses.

[Statutory Authority: RCW 41.50.050(5) and 41.32.520. 05-12-108, § 415-112-700, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-700, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-700, filed 2/15/78. Formerly WAC 462-36-010.]

**WAC 415-112-705 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?** This section applies to the designation of beneficiaries for Plan 1 and Plan 2 members' defined benefit and Plan 3 members' defined contribution accounts. RCW 41.32.895 governs the defined benefit portion of Plan 3.

(1) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the depart-

ment's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by:

(a) RCW 41.32.520 for Plan 1 members;

(b) RCW 41.32.805 for Plan 2 members; and

(c) RCW 41.34.070 for Plan 3 members.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.32.520 (1)(b) or 41.32.805(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

### Examples:

#### EXAMPLE ONE.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

##### Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW

41.32.520 for Plan 1 members, RCW 41.32.805 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

#### EXAMPLE TWO.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

##### Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

#### EXAMPLE THREE.

##### Facts

When she became a TRS 1 member, Joan was unmarried and named her mother as her beneficiary. Joan later married, but did not complete a new beneficiary form before she died with four years of service.

##### Result

Unless required to do otherwise by a court order, the department will comply with RCW 41.32.520(1) and pay Joan's surviving spouse the accumulated contributions in her retirement account. In this case, Joan's mother will not receive a distribution.

#### EXAMPLE FOUR.

##### Facts

John is a TRS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.32.805(2). However, Mary died the following week before requesting a distribution from the department.

##### Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). 05-12-041, § 415-112-705, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-705, filed 4/21/00, effective 5/22/00.]

**WAC 415-112-820 What is a bona fide position for purposes of WAC 415-112-810?** If you are a TRS Plan 1 member and meet the requirements in this section, you are

deemed to occupy a bona fide position for purposes of WAC 415-112-810 through 415-112-835.

(1) Service for single employer. You are employed in a bona fide position if you perform contracted service for one and only one employer and you satisfy the requirements of (a), (b), and (c) of this subsection.

(a) Written contract. You are employed under a part-time written contract with a school district, educational service district, community or technical college, school for the deaf, or school for the blind that meets the following conditions:

(i) Contract with school district or educational service district. You must be under a part-time contract from the first teaching day to the last teaching day of the school's official calendar.

(ii) Contracts with community or technical college, school for the blind, or school for the deaf. You must be under part-time contracts for three of the four academic quarters (summer, fall, winter, or spring) of the institution's official calendar.

(b) Instructional position. You are employed in an instructional position. An instructional position is a position in which more than seventy-five percent of your time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor.

(c) Number of days. Under the contract(s), you must be employed not less than twenty full-time days or the equivalent, and earn less than a full year of service credit.

(2) Combining service to meet requirements of subsection (1) of this section. When you provide services under part-time written contracts with more than one employer, service under all part-time written contracts must be combined to determine if you are employed in a bona fide position. You are employed in a bona fide position only if you satisfy the requirements of (a), (b), and (c) of this subsection.

(a) Written contract. You are employed under two or more written contracts with a school district, educational service district, community or technical college, school for the deaf, or school for the blind. You must be under contract for the equivalent of three of the four academic quarters (summer, fall, winter, or spring) of the institution's official calendar.

Example 1. Susan is employed part time with School District B from September 1 through December 31. She is employed with School District C from January 1 through June 20. Susan meets the "written contract" requirement of this subsection because she is under contract for the equivalent of three academic quarters (fall, winter, and spring).

Example 2. Bill is employed with School District B from September 1 through December 31. He is employed with Community College C for Winter and Spring quarters. Bill meets the "written contract" requirement of this subsection because he is under contract for the equivalent of three academic quarters (fall, winter, and spring).

(b) Instructional position. The hours you spend as a classroom instructor, a librarian, or a counselor in any of the

positions must be at least seventy-five percent of the total hours of service in all the positions.

(c) Number of days. The total number of days in all contracted positions must not be less than twenty full-time days or the equivalent, and must not be more than the one hundred forty-four full-time days or the equivalent.

(3) To determine if you meet the foregoing requirements, the department may consider additional information. Upon the department's request, employers must provide, without limitation, the following information:

(a) For school district employees, the salary schedule and related workload provisions, if any, adopted pursuant to RCW 28A.405.200 by the school district by which the member was employed;

(b) Whether your position is included on the employing district's salary schedule, in workload provisions, or in a collective bargaining agreement;

(c) Whether your position has duties, responsibilities, workload requirements, or methods of pay similar to those of positions found in the district's schedule, workload provisions, or collective bargaining agreement;

(d) When your position was created, and how long you held the position;

(e) Whether you have previously retired under the provisions of chapter 41.32 RCW.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010 (10)(a)(iv). 05-21-051, § 415-112-820, filed 10/13/05, effective 11/13/05. Statutory Authority: RCW 41.50.050(5) and 41.32.345. 04-21-080, § 415-112-820, filed 10/20/04, effective 11/20/04. Statutory Authority: RCW 41.32.345 and 41.50.050. 93-20-021, § 415-112-820, filed 9/24/93, effective 10/25/93. Statutory Authority: Chapter 41.32 RCW as amended by 1987 c 265. 87-20-082 (Order 87-09), § 415-112-820, filed 10/7/87.]

## Chapter 415-501 WAC

### DEFERRED COMPENSATION PLAN

#### WAC

415-501-110

415-501-472

415-501-475

#### Definitions.

Who determines DCP's investment options?

May I choose how I want my deferred compensation invested?

**WAC 415-501-110 Definitions. (1) Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Beneficiary.** A beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(3) **Compensation.** All payments made to a public employee by the employer as remuneration for services rendered.

(4) **Deferred compensation.** The amount of the participant's compensation that is deferred under a participation agreement. See WAC 415-501-410.

(5) **Deferred compensation plan or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

(6) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

(7) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

(8) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ten years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

(9) **Employee retirement benefits board.** The board created by RCW 41.50.086.

(10) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

(11) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial adjustment from his/her retirement plan with the same employer; and

(b) Age seventy and one-half.

(12) **Participant.** An eligible employee:

(a) Who has submitted a participation agreement that is approved by the department; and

(b) Who either:

(i) Is currently deferring compensation under the plan; or

(ii) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

(13) **Participation agreement.** The agreement executed by an eligible employee pursuant to WAC 415-501-410, in which the eligible employee chooses to become a plan participant.

(14) **You,** as used in this chapter, means a participant as defined in subsection (12) of this section.

[Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. 05-15-045, § 415-501-110, filed 7/11/05, effective 8/11/05; 04-22-053, § 415-501-110, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-110, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-110, filed 5/18/00, effective 6/18/00. Statutory Authority:

RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-010, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-472 Who determines DCP's investment options?** (1) The state investment board, in consultation with the employee retirement benefits board, makes certain investment options available to plan participants. The investment board may:

(a) Open, change, or close investment options according to its investment policy; or

(b) Change investment managers for any investment option.

(2) If the state investment board closes or substantially changes an investment option, the state investment board may transfer the funds invested in that option to another option that, in the board's judgment, most closely represents the investment characteristics of the option being closed or changed.

[Statutory Authority: RCW 41.50.050(5), 41.50.780(10). 05-22-109, § 415-501-472, filed 11/2/05, effective 12/3/05.]

**WAC 415-501-475 May I choose how I want my deferred compensation invested?** (1) You must designate on your participation agreement the investment option(s) in which you wish to have your deferrals invested.

(2) In general, you may change the investment of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. However, if necessary to protect the performance results of the DCP program, the department has the right to:

(a) Limit the number of times you change investment options;

(b) Limit the frequency of the changes;

(c) Limit the manner of making changes; or

(d) Impose other restrictions.

In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.

(3) Beneficiaries receiving a distribution may change investment options according to the provisions of subsection (2) of this section.

[Statutory Authority: RCW 41.50.050(5), 41.50.780(10). 05-22-109, § 415-501-475, filed 11/2/05, effective 12/3/05. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. 04-22-053, § 415-501-475, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-475, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-075, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-075, filed 7/29/96, effective 7/29/96.]

## Title 434 WAC

### SECRETARY OF STATE

#### Chapters

434-04

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Use of the state seal.

Elections.

Declarations of candidacy and filing procedures.

Voting by mail.

- 434-253**      **The polling place—Before, during and after the election.**
- 434-257**      **Regulations on accessibility of polling places.**
- 434-260**      **Election review process and certification of election administrators.**
- 434-261**      **Counting center procedures.**
- 434-262**      **Canvassing and certification of primaries and elections.**
- 434-324**      **Official statewide voter registration data base.**
- 434-335**      **Electronic voting requirements.**
- 434-379**      **Verification of signatures on referendum and initiative petitions.**
- 434-840**      **Address confidentiality program.**

**DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE**

**Chapter 434-238  
VOTE-BY-MAIL**

- 434-238-010**      Authority and purpose. [02-09-007, recodified as § 434-238-010, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-010, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-010, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-020**      Definitions. [02-09-007, recodified as § 434-238-020, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-020, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-020, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-025**      Mail ballot precincts. [02-09-007, recodified as § 434-238-025, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150, 02-07-028, § 434-236-025, filed 3/12/02, effective 4/12/02.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-030**      Request for mail ballot election. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-238-030, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-238-030, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-030, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-030, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-030, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-055**      Odd numbered year primaries by mail. [02-09-007, recodified as § 434-238-055, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-055, filed 3/12/02, effective 4/12/02.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-060**      Notice of election. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-238-060, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-238-060, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-060, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-060, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-060, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-070**      Delivery of ballot to voter. [02-09-007, recodified as § 434-238-070, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, §

- 434-236-070, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-070, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-070, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-080**      Envelope specifications. [02-09-007, recodified as § 434-238-080, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-080, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-080, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-080, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-090**      Instructions to voters. [02-09-007, recodified as § 434-238-090, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-236-090, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-236-090, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-236-090, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-090, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-100**      Depositing of ballots. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-238-100, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-238-100, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-100, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-100, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-100, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-110**      Obtaining replacement ballots. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-238-110, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-238-110, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-110, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-110, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-110, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-120**      Unsigned affidavit. [02-09-007, recodified as § 434-238-120, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-120, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-120, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-140**      Verification of signatures—Process. [02-09-007, recodified as § 434-238-140, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-140, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-140, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-140, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
- 434-238-160**      Master list of voters. [02-09-007, recodified as § 434-238-160, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-160, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-160, filed 11/1/83.] Repealed by 05-17-145, filed

	8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.		8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-238-170	Logic and accuracy test. [Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-238-170, filed 7/16/04, effective 8/16/04, 02-09-007, recodified as § 434-238-170, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-236-170, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-236-170, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-170, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-040	Absentee ballot application forms originating outside the state of Washington. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-040, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-040, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-238-180	Tallying of ballots. [02-09-007, recodified as § 434-238-180, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-236-180, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-180, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-180, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-050	Ongoing absentee ballot application. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-050, filed 10/13/97, effective 11/13/97. Statutory Authority: 1991 c 23. 91-20-074, § 434-40-050, filed 9/26/91, effective 10/27/91. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-050, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-238-200	Maintenance of records. [02-09-007, recodified as § 434-238-200, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-236-200, filed 10/13/97, effective 11/13/97. Statutory Authority: 1983 1st ex.s. c 71. 83-22-055 (Order 83-2), § 434-36-200, filed 11/1/83.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-060	Termination of ongoing absentee voter status. [Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-240-060, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-060, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-060, filed 10/13/97, effective 11/13/97. Statutory Authority: 1991 c 23. 91-20-074, § 434-40-060, filed 9/26/91, effective 10/27/91. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-060, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
<b>Chapter 434-240</b> <b>ABSENTEE VOTING</b>		434-240-080	Special absentee ballot. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-080, filed 3/12/02, effective 4/12/02.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-005	Authority and purpose. [Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-240-005, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-005, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-005, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-090	Special absentee ballot application form. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-090, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-090, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-090, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-010	Definitions. [Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-240-010, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 03-15-054, § 434-240-010, filed 7/11/03, effective 8/11/03; 02-20-037, § 434-240-010, filed 9/24/02, effective 10/25/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-010, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-010, filed 10/13/97, effective 11/13/97. Statutory Authority: 1991 c 23. 91-20-074, § 434-40-010, filed 9/26/91, effective 10/27/91. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-010, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-100	Special absentee ballot—Material to be included. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-100, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-100, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-020	Applications for single absentee ballots. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-020, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-020, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-020, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-110	Special absentee ballot—Time application received. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-110, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-110, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-027	Requesting absentee ballot for family member. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-027, filed 3/12/02, effective 4/12/02.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-120	Health care facility absentee ballot application form. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-120, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-120, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-120, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-030	Application form for a regular absentee ballot. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-030, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-030, filed 1/12/88.] Repealed by 05-17-145, filed	434-240-130	Incomplete application from elector. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-130, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-130, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-130, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-240-150	Verification of absentee ballot application. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-150, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-150, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-150, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-245	Procedure for signatures that don't match. [Statutory Authority: RCW 29.04.080. 04-01-072, § 434-240-245, filed 12/12/03, effective 1/12/04.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-180	Service and overseas voters—Material and postage. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-180, filed 10/13/97, effective 11/13/97. Statutory Authority: 1991 c 23. 91-20-074, § 434-40-180, filed 9/26/91, effective 10/27/91. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-180, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-250	Absentee voter attempting to vote at the polls. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-250, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-250, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-250, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-190	Absentee ballot envelopes. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-190, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-240-190, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-240-190, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-190, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-260	Absentee ballots returned after the poll lists have been marked. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-260, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-260, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-200	Absentee ballot—Instructions to voters. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-240-200, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-200, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-200, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-270	Maintenance of an audit trail on absentee ballots. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-270, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-270, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-205	Replacement absentee ballots. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-205, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080 and 29.04.210. 99-08-089, § 434-240-205, filed 4/6/99, effective 5/7/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, § 434-240-205, filed 10/13/97, effective 11/13/97.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-290	Security of absentee ballots. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-290, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-290, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-225	Definitions regarding absentee ballots. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, § 434-240-225, filed 10/13/97, effective 11/13/97.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-300	Absentee ballot process to be expedited. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-300, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-300, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-230	Processing of absentee ballots. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-230, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-240-230, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-240-230, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-230, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	434-240-320	Mail ballot precincts. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-240-320, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-320, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-240-320, filed 1/13/98, effective 2/13/98.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-240-235	Unsigned affidavit. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-235, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-240-235, filed 1/13/98, effective 2/13/98.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.	<p style="text-align: center;"><b>Chapter 434-333</b> <b>ELECTRONIC VOTING REQUIREMENTS</b></p>	
434-240-240	Verification of the signature and postmark on absentee ballots. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-240-240, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-240, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-240, filed 1/12/88.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.		
		434-333-010	Certification of vote tallying equipment. [02-09-007, recodified as § 434-333-010, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-010, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-010, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
		434-333-015	Application for certification. [02-09-007, recodified as § 434-333-015, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-015, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-015, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
		434-333-020	Additional information and equipment required. [02-09-007, recodified as § 434-333-020, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-020, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-020, filed 6/2/92, effective 7/3/92.] Repealed by



	05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.		by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-025	Vendor deposit for examination expenses. [02-09-007, recodified as § 434-333-025, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-025, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-025, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-065	Logic and accuracy test conduct. [02-09-007, recodified as § 434-333-065, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-065, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-065, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-065, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-030	Examination of equipment. [02-09-007, recodified as § 434-333-030, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-030, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-030, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-070	Logic and accuracy test observers. [02-09-007, recodified as § 434-333-070, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-070, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-070, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-070, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-035	Public hearing. [02-09-007, recodified as § 434-333-035, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-035, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-035, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-075	Logic and accuracy testing of voting systems and equipment—State primary and general election. [02-09-007, recodified as § 434-333-075, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-075, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-075, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-075, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-040	Issuance of certification. [02-09-007, recodified as § 434-333-040, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-040, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-040, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-082	Procedure for conduct of delayed primary or general election emergency logic and accuracy test. [02-09-007, recodified as § 434-333-082, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-082, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-045	Modification of certified equipment, guidelines for reexamination. [02-09-007, recodified as § 434-333-045, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-045, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-045, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-085	Logic and accuracy test scheduling and preparation—State primary and general election. [02-09-007, recodified as § 434-333-085, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-085, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-085, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-085, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-050	Application for certification or examination of modified voting systems or devices. [02-09-007, recodified as § 434-333-050, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-050, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-050, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-090	Logic and accuracy test certification—State primary and general election. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-333-090, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-333-090, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 00-10-009, § 434-334-090, filed 4/21/00, effective 5/22/00; 99-08-115, § 434-334-090, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-090, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-090, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-055	Acceptance testing of voting systems and equipment. [02-09-007, recodified as § 434-333-055, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-055, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-055, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-055, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-095	Logic and accuracy testing of voting systems and equipment—Special elections. [02-09-007, recodified as § 434-333-095, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-095, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-095, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-095, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
434-333-060	Inclusion of the federal election commission standards for voting equipment. [02-09-007, recodified as § 434-333-060, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-060, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-060, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.	434-333-100	Logic and accuracy test deck preparation—Special elections. [02-09-007, recodified as § 434-333-100, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-100, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080,
434-333-063	Definition of official logic and accuracy test. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-333-063, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-333-063, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-063, filed 4/7/99, effective 5/8/99.] Repealed		

- 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-100, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-100, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-105 Logic and accuracy test scheduling and preparation—Special election. [02-09-007, recodified as § 434-333-105, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-105, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-105, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-105, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-110 Logic and accuracy test certification—Special election. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-333-110, filed 7/16/04, effective 8/16/04. 02-09-007, recodified as § 434-333-110, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 00-10-009, § 434-334-110, filed 4/21/00, effective 5/22/00; 99-08-115, § 434-334-110, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-110, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-110, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-120 Logic and accuracy test preparation—State primary and general election—Punchcard systems. [02-09-007, recodified as § 434-333-120, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, recodified as § 434-334-120, filed 4/7/99, effective 5/8/99; 99-08-115, § 434-334-080, filed 4/7/99, effective 5/8/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-334-080, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-34-080, filed 6/2/92, effective 7/3/92.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-125 Punchcard test deck maintenance and storage. [02-09-007, recodified as § 434-333-125, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-125, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-127 Punchcard adjustment standards and tests. [02-09-007, recodified as § 434-333-127, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 00-10-009, § 434-334-127, filed 4/21/00, effective 5/22/00.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-130 Punchcard test precinct selection—State primary and general elections. [02-09-007, recodified as § 434-333-130, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-130, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-135 Punchcard testing requirements prior to official logic and accuracy test. [02-09-007, recodified as § 434-333-135, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-135, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-140 Definitions. [02-09-007, recodified as § 434-333-140, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 00-10-009, § 434-334-140, filed 4/21/00, effective 5/22/00; 99-08-115, § 434-334-140, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-145 Logic and accuracy test deck preparation—State primary and general election—Optical scan systems. [02-09-007, recodified as § 434-333-145, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-145, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-150 Optical scan test ballot selection—State primary and general elections. [02-09-007, recodified as § 434-333-150, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-150, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-155 Optical scan read head adjustment standards and tests. [02-09-007, recodified as § 434-333-155, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-155, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-160 Optical scan read head and ballot scan area alignment tests. [02-09-007, recodified as § 434-333-160, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 00-10-009, § 434-334-160, filed 4/21/00, effective 5/22/00; 99-08-115, § 434-334-160, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-165 Optical scan ballot marking code program test. [02-09-007, recodified as § 434-333-165, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 00-10-009, § 434-334-165, filed 4/21/00, effective 5/22/00; 99-08-115, § 434-334-165, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-170 Precinct-based optical scan ballot counter preparation and testing. [02-09-007, recodified as § 434-333-170, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-170, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.
- 434-333-175 Poll site-based optical scan ballot counter test notices, observers, and log of process. [02-09-007, recodified as § 434-333-175, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.33.350. 99-08-115, § 434-334-175, filed 4/7/99, effective 5/8/99.] Repealed by 05-18-022, filed 8/29/05, effective 9/29/05. Statutory Authority: RCW 29A.04.611.

**Reviser's note:** Later promulgation, see chapter 434-335 WAC.

## Chapter 434-04 WAC

### USE OF THE STATE SEAL

#### WAC

434-04-017 Description of seal for use on state flags.

**WAC 434-04-017 Description of seal for use on state flags.** (1) Each flag shall have official identical seals, one on each side of the flag, and so placed that the center of each seal shall be centered on each side of the flag. The seal may have a serrated edge;

(2) The size of the seal to be used shall be in proportion to the size of the flag as follows:

Flag	Size Diameter of State Seal:
3' x 5'	19"
4' x 6'	25"
5' x 8'	31"

In all the other instances, the ratio of the seal diameter to the length of the flag shall be 1:3; and the ratio of the flag height to flag width shall be 1:1.6;

(3) The following color references for textiles are by cable number in the Standard Color Reference of America, Tenth Edition of The Color Association of the United States, Inc., New York, New York

<b>Flag Color</b>	<b>Cable Color (Textile)</b>	<b>Pantone Color (Process CMYK Printing)</b>
Flag Background	Irish Green 80210	PMS DS-268-1
State Seal Back- ground	Oriental Blue 80176	PMS DS-226-3
State Seal (por- trait, lettering, outer and inner rings)	Black	PMS Process Black
State Seal Gold	Spanish Yellow 80068	PMS DS-5-4
Fringe (if any) Gold	Spanish Yellow 80068	PMS DS-5-4
George Washing- ton's Face	Eggshell 80004	PMS DS-5-9

(4) All textile colors shall be of colorfast washable dyes;

(5) The flag may be flown or displayed in its entirety as described herein; the state seal shall not be expropriated from the flag for any other use and such expropriation is regulated by the statutes (chapter 43.04 RCW) and administrative rules (chapter 434-04 WAC) governing the use of the Washington state seal.

[Statutory Authority: RCW 43.04.040 and 34.05.350. 05-15-018, § 434-04-017, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.04.040(4), 89-20-031, § 434-04-017, filed 9/29/89, effective 10/30/89.]

### **Chapter 434-208 WAC**

#### **ELECTIONS**

(Formerly chapter 434-08 WAC)

#### **WAC**

434-208-080 Electronic facsimile filings followed by original document.

#### **DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

434-208-100 Registering to vote—Nontraditional address. [Statutory Authority: RCW 29.04.080. 03-15-054, § 434-208-100, filed 7/11/03, effective 8/11/03.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.

**WAC 434-208-080 Electronic facsimile filings followed by original document.** The filing officer shall require that, except for requests for absentee ballots, any acceptance of an electronic facsimile filing be followed by the original document not later than seven calendar days after the receipt of the facsimile filing. If a voted ballot is faxed, the ballot and the envelope bearing the original signature of the voter must be received on or before the date on which the election is certified pursuant to RCW 29A.60.190.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-208-080, filed 12/28/05, effective 1/28/06. 98-08-010, recodified as § 434-208-080, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.04.230. 92-18-087, § 434-08-080, filed 9/2/92, effective 10/3/92.]

### **Chapter 434-215 WAC**

#### **DECLARATIONS OF CANDIDACY AND FILING PROCEDURES**

(Formerly chapter 434-228 WAC)

#### **WAC**

434-215-065 Withdrawal of candidacy.

434-215-070 Electronic filing—Standards.  
434-215-080 Electronic filing—Eligible jurisdictions.  
434-215-090 Electronic filing—Required information.  
434-215-110 Electronic filing—Interlocal agreements.

**WAC 434-215-065 Withdrawal of candidacy.** Consistent with RCW 29A.24.131, a candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods. The filing officer has discretion to permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots have not been ordered. If no primary election is held for the office, the filing officer has discretion to permit the withdrawal at any time before the general election ballots are ordered.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-215-065, filed 12/28/05, effective 1/28/06.]

**WAC 434-215-070 Electronic filing—Standards.** An electronic system to file declarations of candidacy shall be an online system accessible to candidates on the world wide web that records the information specified in RCW 29A.24.031 (1) through (4) and WAC 434-215-090. At a minimum, the system shall perform the following functions:

- (1) Verify the candidate's voter registration status;
- (2) Check the candidate's name against the name returned by the electronic transfer of funds process;
- (3) Allow the filing officer to verify filings before filing information is made public;
- (4) Accept electronic transfer of funds for the payment of filing fees, except that a candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically;
- (5) Inform, and require the candidate to acknowledge, that submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitution and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee; and
- (6) Inform the candidate that knowingly providing false information on a declaration of candidacy is a class C felony as provided by RCW 29A.84.311.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-215-070, filed 8/19/05, effective 9/19/05. Statutory Authority: 2002 c 140 § 3. 02-15-156, § 434-215-070, filed 7/23/02, effective 8/23/02.]

**WAC 434-215-080 Electronic filing—Eligible jurisdictions.** (1) The secretary of state and county auditors may accept electronically filed declarations of candidacy for any office for which they are authorized to accept filings. Any system designed to accept electronically filed declarations of candidacy must comply with the requirements of WAC 434-215-070.

(2) Pursuant to RCW 29A.24.070(2), a candidate for the legislature, the court of appeals, or superior court in a jurisdiction that is within one county may file the declaration of

candidacy with either the secretary of state or the county auditor. If the secretary of state or county auditor receives a declaration of candidacy from such a candidate, the candidacy information must be exchanged with the other filing officer as soon as possible, and within one business day at the latest. All candidacy information must be exchanged with the other filing officer immediately after the close of business on the last day for filings.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-215-080, filed 8/19/05, effective 9/19/05. Statutory Authority: 2002 c 140 § 3. 02-15-156, § 434-215-080, filed 7/23/02, effective 8/23/02.]

**WAC 434-215-090 Electronic filing—Required information.** At a minimum, electronically filed declarations of candidacy shall provide:

- (1) The month and day of the candidate's date of birth;
- (2) An electronic mail address, phone number, residential address, and mailing address where the candidate may be contacted.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-215-090, filed 8/19/05, effective 9/19/05. Statutory Authority: 2002 c 140 § 3. 02-15-156, § 434-215-090, filed 7/23/02, effective 8/23/02.]

**WAC 434-215-110 Electronic filing—Interlocal agreements.** The secretary of state may enter into interlocal agreements with county auditors to provide services to allow county auditors to accept electronic filings. Nothing in an agreement shall contravene RCW 29A.24.070, determining where candidates file for office.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-215-110, filed 8/19/05, effective 9/19/05. Statutory Authority: 2002 c 140 § 3. 02-15-156, § 434-215-110, filed 7/23/02, effective 8/23/02.]

## Chapter 434-250 WAC

### VOTING BY MAIL

#### WAC

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**WAC 434-250-010 Purpose.** This chapter implements the various methods for voting by mail and conducting elections by mail.

(1) These rules establish standards and procedures for the issuance of:

- (a) Ongoing absentee ballots, as authorized by RCW 29A.40.040;

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- (b) Single absentee ballots, as authorized by RCW 29A.40.020; and

- (c) Special absentee ballots, as authorized by RCW 29A.40.050.

(2) These rules also establish standards and procedures for the following methods of conducting elections by mail:

- (a) Counties designated as mail ballot counties, as authorized by RCW 29A.48.010(1);

- (b) Precincts designated as mail ballot precincts, as authorized by RCW 29A.48.010(2);

- (c) Special elections conducted by mail, as authorized by RCW 29A.48.020; and

- (d) Odd year primary elections conducted by mail, as authorized by RCW 29A.48.030.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-010, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-020 Definitions.** As used in this chapter:

- (1) "Absentee ballot" includes:

- (a) An ongoing absentee ballot issued to a voter who has requested status as an ongoing absentee voter, as authorized by RCW 29A.40.040;

- (b) A single absentee ballot issued to a voter who has requested an absentee ballot for a single election, as authorized by RCW 29A.40.020;

- (c) A special absentee ballot issued to a voter who has indicated that he or she will be unable to vote and return a regular absentee ballot timely, as authorized by RCW 29A.40.050; and

- (d) A hospital absentee ballot issued to a voter confined to a health care facility on the day of a primary or election, as authorized by RCW 29A.40.080.

- (2) "Final processing" means the reading of ballots by an electronic vote tallying system, but does not include tabulation.

- (3) "Initial processing" means all steps taken to prepare absentee ballots for tabulation, except for the reading of ballots by an electronic vote tallying system. Initial processing includes, but is not limited to: Verification of the signature and postmark on the return envelope; removal of the security envelope from the return envelope; removal of the ballot from the security envelope; manual inspection for damage, write-in votes, and incorrect or incomplete marks; duplication of damaged and write-in ballots; and other preparation of ballots for final processing.

- (4) "Mail ballot" means a ballot used in an election conducted by mail, as authorized by RCW 29A.48.010, 29A.48.020, or 29A.48.030. Unless specified otherwise, mail ballots must be prepared and processed in the same manner as absentee ballots.

- (5) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-020, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-030 Applications.** (1) As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. A voter may request status as

an ongoing absentee voter by indicating such on a standard voter registration form.

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. Each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed;

(c) A space for the voter to indicate for which election or elections the application is made; and

(d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an out-of-state, overseas, or service voter not registered to vote in Washington to indicate his or her last residential address in Washington;

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible; and

(c) The declaration required in WAC 434-250-050.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

(5) If an application for an absentee ballot does not contain sufficient information to enable the auditor to issue the correct absentee ballot, the auditor shall notify the person and explain why the application is not accepted. If, in the judgment of the county auditor, enough time exists to correct the application, the county auditor must request the proper information from the voter in order to facilitate the application. If, in the judgment of the county auditor, insufficient time exists to correct the application, the auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. Upon its return, the ballot must be referred to the county canvassing board, and the only offices or issues that may be tabulated are those common to the entire county and those for which it can be conclusively determined the voter is qualified to vote.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-030, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-040 Instructions to voters.** (1) In addition to the instructions required by chapters 29A.36 and

29A.40 RCW, instructions for properly voting and returning an absentee ballot must also include:

(a) How to correct a ballot;

(b) How to complete and sign the affidavit on the return envelope;

(c) How to make a mark, witnessed by two other people, if unable to sign the affidavit;

(d) How to place the ballot in the security envelope and place the security envelope in the return envelope;

(e) How to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(f) Notice that postage is required, if applicable; and

(g) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated place no later than election day, and providing the location, dates, and times for depositing the ballot as an alternative to mailing the ballot.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-040, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-050 Ballot materials.** In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each absentee ballot must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the words "OFFICIAL BALLOT - DO NOT DELAY" prominently on the front, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

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I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;

I am entitled to vote in this election;

I have not already voted in this election;

It is illegal to vote if I am not a United States citizen;

It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter, except as otherwise provided by law; and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature \_\_\_\_\_ Date \_\_\_\_\_

The return envelope must conform to postal department regulations.

County auditors may use existing stock of absentee envelopes until January 1, 2006.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-050, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-060 Service and overseas voters—Material and postage.** Pursuant to RCW 29A.40.150, the secretary of state must furnish envelopes and instructions for out-of-state, overseas, and service voters. For purposes of RCW 29A.40.150, out-of-state voters are limited to voters who are spouses or dependents of service voters, and service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW. All absentee ballots to voters in these categories will be sent postage-free, pursuant to the provisions of federal law, and the return envelopes must be marked as to indicate that they may be returned free of postage.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-060, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-070 Forwarding ballots.** If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the auditor must include with the ballot an explanation that is substantially similar to the following:

For each jurisdiction listed on the ballot, you must reside in the jurisdiction in order to vote for that office or issue. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

This explanation may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. The county auditor must utilize postal service endorsements that allow the ballots to be forwarded, allow the county auditor to receive from the post office the addresses to which ballots were forwarded, and allow the return of ballots that were not capable of being forwarded. If the above explanation is not provided to the voter, the return envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-070, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-080 Replacement ballots.** The county auditor may issue a replacement ballot, as authorized by RCW 29A.40.061, if the request is received prior to 8:00 p.m. on election day.

Replacement ballots or the original ballot, whichever is received first, shall be credited to the voter's registration file and tabulated if the ballot meets all requirements for tabulation. If the auditor receives additional ballots from a voter, as indicated by the fact that the voter is already credited with voting, the additional ballots shall not be counted and shall be forwarded to the county canvassing board for rejection.

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[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-080, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-090 Absentee ballots issued after the poll lists have been marked.** Absentee ballots which are issued and returned to the county auditor after the poll lists have been marked shall be segregated from other absentee ballots, and shall not be tabulated until the poll lists have been examined following the election to ensure that those persons did not vote at the polls on election day.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-090, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-095 Voting on direct recording electronic voting devices.** If a voter who was issued an absentee or mail ballot requests to vote on a direct recording electronic voting device, the county auditor must first confirm that the voter has not already returned a voted ballot. Confirmation that the voter has not already returned a voted ballot may be achieved by accessing the county voter registration system by electronic, telephonic, or other means. If the county auditor is unable to confirm that the voter has not already returned a voted ballot, the voter may not vote on a direct recording electronic voting device.

Consistent with RCW 29A.46.110, in order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If a voted absentee or mail ballot is returned after a ballot is cast on the direct recording electronic voting device, the absentee or mail ballot must not be counted.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-250-095, filed 12/28/05, effective 1/28/06.]

**WAC 434-250-100 Depositing of ballots.** Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Other places of deposit may be staffed or unstaffed.

(1)(a) Staffed sites must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of the duties.

(b) Staffed deposit sites must be open from 7:00 a.m. until 8:00 p.m. on the day of the election and may be open prior to the election on dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff.

(c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.

(2) Unstaffed sites may be used if the ballot drop box is either:

(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or

(b) Secured and located indoors.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots. Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. On election day, ballot drop boxes must be emptied at exactly 8:00 p.m. to ensure that all ballots meet the 8:00 p.m. delivery deadline.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-250-100, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-100, filed 8/19/05, effective 9/19/05.]

#### **WAC 434-250-110 Processing of absentee ballots. (1)**

Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which absentee processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of absentee ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of absentee ballots.

(2) In counties tabulating absentee ballots on an electronic vote tallying system, the canvassing board or its representatives may perform initial processing of absentee ballots upon their return. In counties tabulating absentee ballots by hand, the inner security envelope may not be opened until after 8:00 p.m. on election day. Following initial processing, all absentee ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(3) Final processing may begin after 7:00 a.m. on the day of the election.

(4) Tabulation may begin after 8:00 p.m. on the day of the election.

(5) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all over-votes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given

to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-110, filed 8/19/05, effective 9/19/05.]

#### **WAC 434-250-120 Verification of the signature and postmark on ballots. A ballot shall be counted only if:**

(1) It is returned in the return envelope, or a similar envelope if it contains the same information and signed affidavit and is approved by the auditor;

(2) The affidavit is signed with a valid signature in the place afforded for the signature on the envelope;

(3) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark;

(4) It is postmarked not later than the day of the election or deposited in the auditor's office, a polling location, or a designated deposit site not later than 8:00 p.m. on election day; and

(5) The ballot is received prior to certification of the election.

The signature on the return envelope, or on a copy of the return envelope, must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a return envelope may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-250-120, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-120, filed 8/19/05, effective 9/19/05.]

#### **WAC 434-250-130 Maintenance of an audit trail.**

Each county auditor shall maintain an audit trail with respect to the processing of absentee ballots, which shall include, but not be limited to, the following:

(1) A record of the date each absentee ballot application was received, the date the ballot was mailed or issued, and the date the ballot was received;

(2) The number of absentee ballots issued and returned, by legislative and congressional district, for each primary and general election;

(3) A record of the disposition of each request for an absentee ballot that was not honored;

(4) A record of the disposition of each returned absentee ballot that was not counted;

(5) A record of the time and place each time the county canvassing board met to process absentee ballots;

(6) A documentation of the security procedures undertaken to protect the integrity of all ballots after receipt, including the seal numbers used to secure the ballots during all facets of the absentee ballot process; and

(7) A reconciliation that all absentee ballots counted plus all absentee ballots rejected is equal to the total number of absentee ballots received.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-130, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-140 Ballot process to be expedited.** All election officials charged with any duties or responsibilities with respect to absentee ballots shall ensure that those duties are performed in an expeditious manner, in order to maximize the opportunity for voters to receive, vote, and return the ballots in time to be counted.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-140, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-300 Elections by mail.** Elections may be conducted either partially or entirely by mail, as authorized by RCW 29A.48.010, 29A.48.020, or 29A.48.030. If every precinct in a county has been designated a mail ballot precinct, as authorized by RCW 29A.48.010(2), the county is considered a mail ballot county, as authorized by RCW 29A.48.010(1). Separate absentee ballots need not be provided in an election conducted by mail. Unless specified otherwise, mail ballots must be prepared and processed in the same manner as absentee ballots.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-300, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-310 Notice of elections by mail.** (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than forty-five days before the primary date.

(3) In addition to the information required in the notice of election published pursuant to RCW 29A.52.351, a county auditor conducting an election by mail, whether for a single jurisdiction or the entire county, must also state:

(a) That the election will be conducted by mail and regular polling places will not be open;

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) The amount of postage required on the return envelope;

(e) The dates, times and locations of designated deposit sites and sites for voting devices that are accessible to the visually impaired.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-310, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-320 Deposit sites.** A county auditor conducting a county-wide election entirely by mail must provide at least one site for the deposit of ballots in addition to the county auditor's office. All deposit sites must meet the requirements of WAC 434-250-100.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-320, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-330 County auditor's office as a polling place.** (1) For elections conducted entirely by mail, services that would have been provided at the polling place must, at a minimum, be provided at the county auditor's office, including provisional ballots. Such services must be provided beginning the date that ballots are mailed to voters. Identification must be provided in compliance with RCW 29A.44.205 and WAC 434-253-055, except in the case of replacement ballots as authorized by RCW 29A.48.040. If the auditor does not maintain poll books at the auditor's office, the voter must sign a log sheet that includes the same information that would have appeared in a poll book.

(2) If the persons providing services at the county auditor's office are not employees of the auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-250-330, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-250-330, filed 8/19/05, effective 9/19/05.]

**WAC 434-250-340 Manual count of selected precincts.** In an election conducted entirely by mail, the manual count of precincts requested by political party observers pursuant to RCW 29A.60.170 must be conducted as follows:

(1) Upon mutual agreement, the official political party observers may request that a manual count be conducted of one race or issue in up to three precincts.

(2) The official political party observers may mutually agree on which precincts are to be counted, or may agree that the selection be made at random. Once the three precincts are selected, the official political party observers may mutually agree on which race or issue in each precinct is to be counted, or may agree that the selection be made at random. The selection must occur before election day to allow the county auditor to assemble the proper ballots.

(3) The count may begin no earlier than 8:00 p.m. on election day and must be completed by 8:00 p.m. on the second day after election day. The official political party observers must receive timely notice of the time and location of the count established by the county auditor. However, the process must proceed as scheduled if the observers are unable to attend.

(4) The ballots that are ready for tabulation at the time the count begins must be included in the manual count of the selected precincts.



(5) Once the manual count of the selected precincts is complete, the same ballots must be tabulated by the voting system.

(6) The results of the manual count must be compared to the results of the voting system count, and documented in a report signed by the county auditor and political party observers present.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-250-340, filed 12/28/05, effective 1/28/06.]

## Chapter 434-253 WAC

### THE POLLING PLACE—BEFORE, DURING AND AFTER THE ELECTION (Formerly chapter 434-53 WAC)

#### WAC

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434-253-048	Provisional ballots—Free access system.
434-253-049	Provisional ballots—Processing.
434-253-055	Identification.
434-253-080	Voter leaving polling place without voting.
434-253-110	Examination of voting devices.
434-253-115	Direct recording electronic device paper printer malfunction.
434-253-160	Ballot accountability form—Poll-sites without direct recording devices.
434-253-165	Ballot accountability form—Precincts with direct recording devices.
434-253-170	Securing provisional, challenged, spoiled, unused, and absentee ballots.
434-253-200	Count of regular voted ballots.
434-253-203	Precinct count optical scan and direct recording devices—Poll-site reconciliation.
434-253-220	Transfer of ballots prior to closing of the polls.
434-253-225	Preparation for transfer of direct recording electronic device paper records.
434-253-230	Sealing the ballot pages appearing in punchcard voting devices.
434-253-240	Return of election supplies and materials.
434-253-300	Paper ballots—Count continuous—When duties completed.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

434-253-040	Verification of voter's name. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-040, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-040, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-253-043	Provisional ballots—When issued. [Statutory Authority: RCW 29A.04.610, 05-06-035 and 05-08-065, § 434-253-043, filed 2/25/05, effective 3/28/05. Statutory Authority: RCW 29.04.210, 29.36.150, 02-07-029, § 434-253-043, filed 3/12/02, effective 4/12/02.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-253-060	Credit for voting. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-060, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-060, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-253-180	Recording of spoiled ballots. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-180, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-

12-083, § 434-53-180, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-253-190 Disposition of irregularly voted ballots. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-190, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-190, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-253-210 Preparing voted ballots for transfer. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-210, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-210, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-253-260 Counting and tabulation prior to closing of the polls—Secrecy of the returns. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-260, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-260, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

**WAC 434-253-010 Polling place—Activities prohibited.** The county auditor shall ensure that all precinct election officers receive instruction regarding activities that are not permitted within the polling place, including electioneering, circulation of campaign material, soliciting petition signatures, impeding the voting process, or get-out-the-vote campaigns. Whenever it is necessary to maintain order within the polling place and the surrounding environs, the inspector may, if circumstances warrant and if the means to do so are available, contact the county auditor, who shall determine the corrective action required. Such corrective action may include contacting a law enforcement agency for their assistance.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-253-010, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-010, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-010, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-020 Polling place—Election supplies.** Polling places shall be provided, at a minimum, with the following supplies at every election:

- (1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;
- (2) Inspector's poll book;
- (3) Required oaths/certificates for inspectors and judges;
- (4) Sufficient number of ballots as determined by election officer;
- (5) Ballot containers;
- (6) United States flag;
- (7) Voting instruction signs;
- (8) Challenge and provisional ballots and envelopes;
- (9) Cancellation cards due to death;
- (10) Voting equipment instructions;
- (11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;
- (12) Keys and/or extra seals;
- (13) Pay voucher;
- (14) Ballots stub envelope;
- (15) Emergency plan of action;

- (16) Either sample ballots or voters' pamphlets;
- (17) HAVA voter information poster; and
- (18) Voter registration forms.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-253-020, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-253-020, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-253-020, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59, 92-12-083, § 434-53-020, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-023 Voter verified paper audit trail—Duties prior to opening of the polls.** If a direct recording electronic device is used at a poll site, before a device may be used by a voter, an inspector and at least one judge must verify:

- (1) The paper printer is secured so that the paper record may not be removed from the device by anyone other than an election officer;
- (2) Only a blank portion of the paper record is visible to the voter as he or she approaches the device; and
- (3) The paper printer is sealed with a numbered seal to ensure the interior of the machine cannot be accessed.

[Statutory Authority: RCW 29A.04.611, 05-24-040, § 434-253-023, filed 11/30/05, effective 12/31/05.]

**WAC 434-253-024 Contents of poll book of registered voters.** Poll books must be printed utilizing information from the official statewide voter registration data base. The poll book of registered voters must contain the name, residence address, sex, month and day of birth, and county voter registration number of each voter in the precinct, a listing of the districts in which that voter resides, and a designation of the applicable county, legislative district, and precinct, or a ballot code identifying this information. The names must be listed alphabetically by last name. The list must contain a space for each voter to sign his/her name and to verify his/her current address and a space for the inspector or judge to credit the voter with having participated in a particular election. The auditor may eliminate from poll books ongoing absentee voters and voters requesting absentee ballots for that election. The poll book must clearly indicate whether or not absentee voters are included on the list. If they are included, a notation must be made next to each absentee voter's name.

[Statutory Authority: RCW 29A.04.611, 05-24-039, § 434-253-024, filed 11/30/05, effective 12/31/05.]

**WAC 434-253-025 Polling place—Items to be posted.** The following items must be posted or displayed at each polling place while it is open:

- (1) United States flag;
- (2) HAVA voter information poster;
- (3) Voting instructions printed in at least 16 point bold type;
- (4) Either sample ballots or voters' pamphlets;
- (5) Voter registration forms;
- (6) Election materials in alternative languages if so required by the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and
- (7) Any other items the county auditor deems necessary.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-253-025, filed 8/19/05, effective 9/19/05.]

**WAC 434-253-045 Provisional ballots—Required information.** A provisional ballot may not be voted on a direct recording electronic voting device. At a minimum, the following information is required to be printed on the outer provisional ballot envelope:

- (1) Name of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the provisional ballot.
- (5) Polling place and precinct number, if applicable, at which voter voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.
- (7) The following oath with a place for the voter to sign and date:

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I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;  
 I am entitled to vote in this election;  
 I have not already voted in this election;  
 It is illegal to vote if I am not a United States citizen;  
 It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter, except as otherwise provided by law; and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

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Signature \_\_\_\_\_ Date \_\_\_\_\_

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-253-045, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-253-045, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610, 05-06-035 and 05-08-065, § 434-253-045, filed 2/25/05, effective 3/28/05. Statutory Authority: RCW 29.04.210, 29.36.150, 02-07-029, § 434-253-045, filed 3/12/02, effective 4/12/02.]

**WAC 434-253-047 Provisional ballots—Disposition.** Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election.

A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record.

Once the provisional ballot has been investigated, disposition of the ballot is as follows:

- (1) If there is no record of the voter ever having been registered, the voter must be offered the opportunity to register and the provisional ballot is not counted.
- (2) If the voter was previously registered and later canceled and the auditor determines that the cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(3) If the voter was previously registered and later canceled and the auditor determines that the cancellation was not in error, the voter must be offered the opportunity to reregister and the provisional ballot is not counted.

(4) If the voter is a registered voter but has voted a ballot other than the one which the voter would have received for his or her precinct, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(5) If the voter is a registered voter in another county, the auditor shall forward the ballot and a corresponding voter guide, or other means by which the ballot can be interpreted, to the supervisor of elections for the jurisdiction in which the voter is registered. The ballot must be forwarded within seven calendar days after a primary or special election and fifteen calendar days after a general election, and as soon as possible if past that date.

(6) If an absentee voter who voted a provisional ballot at the polls has already returned a voted absentee ballot, the provisional ballot is not counted. If the absentee voter who voted a provisional ballot at the polls has not returned a voted absentee ballot, the provisional ballot is counted. If a voted absentee ballot is returned after the provisional ballot has been counted, the absentee ballot is not counted.

(7) If the voter voted a provisional ballot because he or she failed to produce identification as required by RCW 29A.44.205, the ballot is counted if the signature on the envelope matches the signature in the voter registration record.

(8) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-047, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-253-047, filed 2/25/05, effective 3/28/05. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-253-047, filed 3/12/02, effective 4/12/02.]

**WAC 434-253-048 Provisional ballots—Free access system.** (1) Each county shall establish a free access system, as required by the Help America Vote Act, 42 USC sec. 15482 (a)(5), and RCW 29A.60.195 for provisional ballot voters.

(2) The free access system must employ measures to ensure that access is free of cost to the voter and restricted to the individual who cast the ballot, and that the voter's personal information is secure and confidential.

(3) For provisional ballots sent to other counties in the state, the free access system must provide the voter with information as to where the ballot was sent and how to find out if the ballot was counted in that county.

(4) For ballots received from another county, the free access system must provide the voter with information as to whether the ballot was counted and, if not, why. The county may send instructions to the voter on how to access the information.

(5) Provisional ballot disposition information must be available on a county's free access system no later than one week following certification of the election.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-048, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-253-048, filed 2/25/05, effective 3/28/05.]

#### **WAC 434-253-049 Provisional ballots—Processing.**

When the disposition of the ballot determines that the ballot is to be counted, the ballot shall be processed in a manner similar to an absentee ballot except the outer provisional ballot envelopes must be retained separately from the absentee ballot return envelopes. Ballots, including those ballots that are rejected, must be kept in secure storage when not being processed.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-049, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-253-049, filed 2/25/05, effective 3/28/05. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-253-049, filed 3/12/02, effective 4/12/02.]

**WAC 434-253-055 Identification.** A voter must provide photo identification to the precinct election officer before signing the poll book. If the voter cannot provide photo identification, he or she may satisfy the requirements of RCW 29A.44.205 by providing a voter registration card issued by the county auditor or a copy of a current utility bill, bank statement, paycheck, government check, or other government document. If the voter cannot provide any identification, the voter must be issued a provisional ballot rather than a regular ballot.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-055, filed 8/19/05, effective 9/19/05.]

**WAC 434-253-080 Voter leaving polling place without voting.** Whenever it is noted by a precinct election officer that a voter has been issued a ballot and leaves a polling place without returning the ballot, a notation shall be made in the poll book or list along with the ballot stub number of the ballot issued. If a ballot on a direct recording electronic device has not been cast, the precinct election officer must:

- (1) Cancel the ballot to ensure the ballot is not counted;
- (2) Make a mark on the paper record to indicate the ballot has been canceled; and
- (3) Make a notation in the poll book to indicate which direct recording electronic device was used to cancel the ballot.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-253-080, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-080, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-080, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-110 Examination of voting devices.** At least once every hour while the poll booths are open, precinct election officers shall examine the voting devices, poll booths, printed materials within the poll booths, and paper printers attached to direct recording electronic devices to ensure that they have not been tampered with and are in proper working condition.

(1) If any seal or lock on a direct recording electronic device or paper printer has been broken or tampered with, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. The direct recording electronic device and paper printer must be transferred pursuant to WAC 434-253-115 (1)(b). A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(2) Precinct election officers must replace any printed materials that were to remain in the poll booth if they have been defaced, removed, or destroyed.

(3) If a paper printer for a direct recording electronic device has malfunctioned or run out of paper, it must be handled pursuant to WAC 434-253-115.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-253-110, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-253-110, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-253-110, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-110, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-115 Direct recording electronic device paper printer malfunction.** (1) The following must occur if a paper printer for a direct recording electronic device has malfunctioned or run out of paper at any time:

(a) If the precinct election officer has confirmed that no ballots have been cast after the printer ran out of paper or malfunctioned, he or she must remove the direct recording electronic device and paper printer from service, document the problem, and correct the problem. While the problem is being corrected, the direct recording electronic device and paper printer must not be removed from the poll site and must remain in sight of election officers. The direct recording electronic device and paper printer may be returned to service once the problem has been corrected.

(b) If the precinct election officer cannot confirm that no ballots were cast after the printer ran out of paper or malfunctioned, or if the problem cannot be corrected, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. At the direction of the county auditor, a team or teams composed of one representative from each major political party must pick up the direct recording electronic device and paper printer for delivery to the counting center or other location, as designated by the county auditor. The paper printer must be prepared for transfer pursuant to WAC 434-253-225. A precinct election official representing each major political party must seal the direct recording electronic device with a uniquely prenumbered seal. Upon delivery, the county auditor must receive the sealed direct recording electronic device and paper printer and record the time, date, precinct name or number, and seal numbers. A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(2) In any case where an electronic ballot has been cast without a corresponding paper record, the county may print the ballot image stored on the device for use as a paper record for that device.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-253-115, filed 11/30/05, effective 12/31/05.]

**WAC 434-253-160 Ballot accountability form—Poll-sites without direct recording devices.** Precinct election officials shall maintain accountability for all ballots issued for each precinct. The county auditor shall provide a ballot accountability sheet with each list of registered voters for each precinct or combination of precincts, upon which shall be recorded, at a minimum, the following information:

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(1) Identification of the precinct or combination of precincts;

(2) The number of regular ballots delivered to the poll site;

(3) The number of provisional ballots delivered to the poll site;

(4) The number of signatures in the poll book;

(5) The number of regular ballots issued;

(6) The number of provisional ballots issued;

(7) The number of ballots that are challenged;

(8) The total number of ballots voted;

(9) The difference between the number of signatures in the poll book and the total number of ballots voted;

(10) The number of regular ballots spoiled;

(11) The number of provisional ballots spoiled;

(12) The number of regular ballots not used;

(13) The number of provisional ballots not used;

(14) The number of absentee ballots accepted at the poll site;

(15) The total number of ballots returned to the county auditor; and

(16) The total number of ballots accounted for.

Before the opening of the polls, the information enumerated in subsections (1) through (3) of this section must be recorded on the ballot accountability sheet. If additional ballots are delivered to the poll site during the day, the precinct election officials must reflect the number of ballots delivered in subsections (2) and (3) of this section. After the closing of the polls, the information enumerated in subsections (4) through (16) of this section must be recorded on the ballot accountability sheet. Discrepancies must be reported and explained by the precinct election officers.

The precinct election officers shall attest to the accuracy of the ballot accountability sheet by each signing in the spaces provided. The ballot accountability sheet and the precinct list shall be placed in the appropriate container for return to the counting center or auditor's office. The inspector shall remove and retain a copy of the list of participating voters as the "inspector's copy" for the statutorily required retention period.

Whenever anything occurs at a polling place that the precinct election officers feel may create a discrepancy in accounting for all of the ballots, the election officers shall note such events. The auditor may direct that such comments be included with the ballot accountability form or may be included on a separate comments sheet. If a separate sheet is used, it shall be signed by the precinct election officers.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-160, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-253-160, filed 2/25/05, effective 3/28/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-160, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-160, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-165 Ballot accountability form—Precincts with direct recording devices.** Precinct election officials shall maintain accountability for all ballots issued for each precinct. The county auditor shall provide a ballot accountability sheet with each list of registered voters for each precinct or combination of precincts, upon which shall be recorded, at a minimum, the following information:

- (1) Identification of the precinct or combination of precincts;
- (2) The number of regular optical scan ballots delivered to the poll site;
- (3) The number of provisional ballots delivered to the poll site;
- (4) The number of signatures in the poll book;
- (5) The number of regular optical scan ballots issued;
- (6) The number of provisional ballots issued;
- (7) The number of ballots listed on each direct recording device;
- (8) The number of regular optical scan ballots that are challenged;
- (9) The total number of ballots voted;
- (10) The difference between the number of signatures in the poll book and the total number of ballots voted;
- (11) The number of regular optical scan ballots spoiled;
- (12) The number of provisional ballots spoiled;
- (13) The number of regular optical scan ballots not used;
- (14) The number of provisional ballots not used;
- (15) The number of absentee ballots accepted at the poll site;
- (16) The total number of ballots returned to the county auditor; and
- (17) The total number of ballots accounted for.

Before the opening of the polls, the information enumerated in subsections (1) through (3) of this section must be recorded on the ballot accountability sheet. If additional ballots are delivered to the poll site during the day, the precinct election officials must reflect the number of ballots delivered in subsections (2) and (3) of this section. After the closing of the polls, the information enumerated in subsections (4) through (17) of this section must be recorded on the ballot accountability sheet. Discrepancies must be reported and explained by the precinct election officers.

The precinct election officers shall attest to the accuracy of the ballot accountability sheet by each signing in the spaces provided. The ballot accountability sheet and the precinct list shall be placed in the appropriate container for return to the counting center or auditor's office. The inspector shall remove and retain a copy of the list of participating voters as the "inspector's copy" for the statutorily required retention period.

Whenever anything occurs at a polling place that the precinct election officers feel may create a discrepancy in accounting for all of the ballots, the election officers shall note such events. The auditor may direct that such comments be included with the ballot accountability form or may be included on a separate comments sheet. If a separate sheet is used, it shall be signed by the precinct election officers.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-165, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-253-165, filed 2/25/05, effective 3/28/05.]

**WAC 434-253-170 Securing provisional, challenged, spoiled, unused, and absentee ballots.** After the polls have closed, and before the container holding the voted ballots is opened, the unwrapped unvoted regular and provisional ballots shall be rendered unusable. Provisional, challenged, spoiled, unused, and absentee ballots must be placed in containers that are marked and sealed. These containers must

then be placed in the transfer case provided for the return of voting materials to the counting center or auditor's office.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-170, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-170, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-170, filed 6/2/92, effective 7/3/92.]

#### **WAC 434-253-200 Count of regular voted ballots.**

After the provisional, challenged, spoiled, unused, and absentee ballots have been sorted, counted and secured, the regular voted ballots shall be removed from the ballot box and counted, and the number recorded on the ballot accountability sheet. The voted ballots must be placed in a sealed container marked with the transmittal sheet listing the precincts, the number of ballots, and the seal number. The inspector and one judge from each political party must sign the transmittal sheet. The container must then be placed in the transfer case provided for the return of voting materials to the counting center or auditor's office.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-200, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-200, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-200, filed 6/2/92, effective 7/3/92.]

#### **WAC 434-253-203 Precinct count optical scan and direct recording devices—Poll-site reconciliation.** (1)

Each precinct or poll-site ballot counter shall print out results immediately following the closing of the polls. A copy of the results will be posted at the poll-site or otherwise made available for public inspection.

(2) The total of votes cast from each counter shall be reconciled with the number of signatures in the poll book(s) prior to transporting to the counting center. The total number of ballots reported on the results printout should equal the number of signatures in the poll book(s). Discrepancies shall be reported and explained by the inspector.

(3) In a sealed container, the data pack/chip of each ballot counter shall be transported to the counting center with each results printout.

[Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-253-203, filed 2/25/05, effective 3/28/05.]

#### **WAC 434-253-220 Transfer of ballots prior to closing of the polls.**

The county auditor may authorize an early pick up of ballots from designated polling places prior to the closing of the polls. Where so authorized, the precinct election officers at the designated polling places shall remove the voted ballots from the voted ballot container at a time specified by the auditor and count the number of ballots. The count shall be entered on the ballot accountability sheet, a transmittal sheet completed and signed, and the ballots sealed in a transfer container in the same manner used for the closing of the polls. The transmittal sheet may be placed with the ballots or it may be attached to the outside of the transfer container. The election officials shall not leave the polling place. Ballot pickup teams, consisting of two employees of the county auditor's office or two representatives of different major political parties, shall be assigned to pick up the transfer containers for return to the counting center.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-253-220, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-220, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-220, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-225 Preparation for transfer of direct recording electronic device paper records.** (1) In preparation for transfer to a counting center, paper records from direct recording electronic devices must be either:

- (a) Placed in transfer containers; or
- (b) Transferred in the paper printer if the paper printer is sealed so the paper record cannot be removed without breaking the seal.
- (2) Paper records must be accompanied by a transmittal sheet which must include at a minimum:
  - (a) Name or other identifier of the polling place in which the digital recording electronic device was utilized;
  - (b) The seal number from the paper printer; and
  - (c) The serial number or other identifier of the digital recording electronic device if distinctly unique from the seal number on the paper record printer.
- (3) The inspector and one judge from each political party must sign the transmittal sheet attesting to the number of paper record tapes included in the container and the seal number. If paper records are transferred in a container, the container must be locked. The seal must also be applied, if available.
- (4) The paper records must be transferred in a manner that is consistent with the transfer of ballots.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-253-225, filed 11/30/05, effective 12/31/05.]

**WAC 434-253-230 Sealing the ballot pages appearing in punchcard voting devices.** In polling places where punchcard voting devices are used, the county auditor shall ensure that adequate procedures are in place to permit the ballot pages within the voting device to be sealed following the election. This shall be done in such a way so that the ballot pages cannot be altered or otherwise tampered with, and in a manner that will provide an audit trail from ballot to precinct. This may be accomplished by securing the entire device by means of an external seal, or by securing and sealing the ballot pages themselves.

If a unique numbered seal is used, a certificate shall be placed inside the device signed by the precinct election officials recording the serial number of the seal. If some other means of sealing is used, a certificate, signed by the election officials, shall be provided to identify the seal by some appropriate means. The certificate, if not secured inside, shall be returned to and retained by the county auditor.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-230, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-230, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-230, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-240 Return of election supplies and materials.** Supplies and voting materials, including voted, provisional, challenged, spoiled, unused, and absentee ballots and ballot stubs must be secured and returned to the counting center, the county auditor's office, or any other location des-

igned by the auditor. At least two employees of the county auditor's office or two officials representing different major political parties shall transfer the sealed ballot containers to the counting center, county auditor's office, or other location designated by the auditor. Pursuant to RCW 29A.60.110, ballots tabulated by poll site tabulators may be transported by one employee of the county auditor's office if the container is sealed at the poll site and then verified when returned to the counting center, county auditor's office, or other location designated by the county auditor.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-253-240, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-240, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-240, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-240, filed 6/2/92, effective 7/3/92.]

**WAC 434-253-300 Paper ballots—Count continuous—When duties completed.** In a paper ballot precinct, the ballot container shall not be removed from the polls nor shall the counting of the votes be discontinued until all are counted. The duties of the precinct election officers counting ballots in such precincts shall not be complete until it is determined that:

- (1) A recheck of the tally marks accurately reflect the total vote credited to each candidate and the total vote credited for and against each proposition;
- (2) The total number of votes cast for all candidates for a single position to be filled does not exceed the number of voters who have signed the poll book;
- (3) The records of the votes in each tally book are the same.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-253-300, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-253-300, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59. 92-12-083, § 434-53-300, filed 6/2/92, effective 7/3/92.]

## Chapter 434-257 WAC

### REGULATIONS ON ACCESSIBILITY OF POLLING PLACES

(Formerly chapter 434-57 WAC)

#### WAC

434-257-030 Standards for accessible polling places.

**WAC 434-257-030 Standards for accessible polling places.** The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a polling place.

If the standards are not met, temporary or permanent modifications shall be made to make the polling place accessible. Alternative accommodations may be permitted under RCW 29A.16.020. A poll site is fully accessible if all responses in each category are "YES."

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-257-030, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-257-030, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.57.170. 02-02-066, § 434-257-030, filed 12/28/01, effective 1/28/02. 98-08-010, recodified as § 434-257-030, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.57.170. 86-08-045 (Order 86-02), § 434-57-030, filed 3/27/86. Statutory Authority: Chapter 29.57 RCW as

amended by 1985 c 205. 85-18-003 (Order 85-3), § 434-57-030, filed 8/22/85.]

**Chapter 434-260 WAC**  
**ELECTION REVIEW PROCESS AND**  
**CERTIFICATION OF ELECTION**  
**ADMINISTRATORS**  
 (Formerly chapter 434-60 WAC)

**WAC**

434-260-020	Definitions.
434-260-030	Scheduled reviews—Auditor request.
434-260-040	Election reviews—Secretary of state to designate.
434-260-050	Notice of special review.
434-260-140	Draft election review report.
434-260-145	Response to draft election review report.
434-260-150	Final election review report.
434-260-155	County review follow-up.
434-260-300	Maintaining certification as an election administrator.
434-260-310	Application for initial certification and maintenance of certification.

**WAC 434-260-020 Definitions.** As used in this chapter:

(1) "Election review" means the process of examining all or a part of a county's election policies and procedures and includes the review of any documentation of those procedures;

(2) "Election review staff" means the person or persons employed by the secretary of state for the purpose of conducting election reviews;

(3) "Special election review" means an election review conducted in a county or counties whenever the unofficial returns of a primary or election indicate that a mandatory recount is likely in a race for the state legislature, congress, or statewide office;

(4) "Preliminary review report of findings and recommendations" means that draft report made by the election review staff to the county auditor and which contains any recommendations made by the review staff and a preliminary conclusion regarding the county's election procedures;

(5) "Draft election review report" means that report made by the election review staff to the county auditor and the designated members of the county canvassing board. The auditor and/or county canvassing board must respond to the draft election review report in writing and may appeal the report to the election administration and certification board;

(6) "Final election review report" means that report made by the election review staff which contains a copy of the recommendations made by the review staff, the response to those recommendations made by the county auditor or the county canvassing board, and a conclusion written by the staff;

(7) "Special review recommendations" means recommendations made by the review staff to the county auditor and the county canvassing board following the conduct of any special review;

(8) "County auditor designee" is that person designated by the county auditor to participate in the review process, pursuant to the provisions of RCW 29A.04.580. Such a designee must be certified as required by chapter 29A.04 RCW.

(9) "Election administrator" means the person or persons appointed by the county auditor to election management positions as required by RCW 36.22.220 and the state direc-

tor of elections, assistant directors of elections, certification and training program staff members, and any other secretary of state election division employees designated by the director of elections;

(10) "Assistant election administrator" means any person involved in the administration of elections at the state or county level who has been designated as an assistant election administrator by the state director of elections or the county auditor as applicable;

(11) "County canvassing board members" means those officers designated as such pursuant to the provision of chapter 29A.60 RCW;

(12) "Election observers" means those persons designated by the county political party central committee chair person to observe the counting of ballots and related elections procedures;

(13) "Election administration and certification board" means that board created pursuant to the provisions of RCW 29A.04.510;

(14) "Creditable training hours" means each creditable training hour contemplated in WAC 434-260-230 and shall consist of a minimum of fifty minutes of instructional activity programmed for the purpose of mastering information beneficial to the performance of the duties of administering elections.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-020, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-260-020, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-020, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-020, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 93-18-053, § 434-60-020, filed 8/30/93, effective 9/30/93.]

**WAC 434-260-030 Scheduled reviews—Auditor request.** Not later than June 1, any county auditor may request that the secretary of state designate his or her county for an election review. The secretary of state shall, whenever practical, honor that request.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-030, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-030, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-030, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 93-18-053, § 434-60-030, filed 8/30/93, effective 9/30/93.]

**WAC 434-260-040 Election reviews—Secretary of state to designate.** Not later than June 15 the secretary of state shall notify, in writing, the counties selected for an election review and the chairs of the state committees of any major political party. The notification shall include the date and time the review is scheduled to begin. Whenever possible, election reviews shall be conducted on dates that are mutually agreeable to the secretary and to the county auditor, except that those parts of the review process dealing with the actual conduct and canvassing of the election itself must be conducted between election day and the certification of the election returns. In designating counties to be reviewed, the secretary shall take into consideration any complaints filed with his or her office pursuant to the provisions of RCW 29A.04.570 (1)(b).

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-040, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-260-040, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-040, filed 5/19/99, effective 6/19/99.]

98-08-010, recodified as § 434-260-040, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 93-18-053, § 434-60-040, filed 8/30/93, effective 9/30/93.]

**WAC 434-260-050 Notice of special review.** Notice of a special review shall be provided to the county auditor and the political party chairs, by telephone and by electronic facsimile transmission, not later than twenty-four hours after the determination has been made to conduct the special review.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-050, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-050, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-050, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 93-18-053, § 434-60-050, filed 8/30/93, effective 9/30/93.]

**WAC 434-260-140 Draft election review report.** As soon as practicable, but in any event not later than thirty days after the issuance of the preliminary report of findings and recommendations, the review staff shall issue a draft of the election review report to the county auditor and the designated members of the county canvassing board as provided in chapter 29A.60 RCW, and shall include, but not be limited to, the following:

- (1) A narrative description of recommendations made by the review staff;
- (2) Any other information the review staff deems pertinent;
- (3) A preliminary conclusion/evaluation of the county's election procedures.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-140, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-260-140, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-140, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-140, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 93-18-053, § 434-60-140, filed 8/30/93, effective 9/30/93.]

**WAC 434-260-145 Response to draft election review report.** The county auditor and/or county canvassing board must respond, in writing, to the draft election review report, listing the steps that will be taken to correct any problems listed in the report. Such response shall be submitted to the review staff not later than ten days following the issuance of the draft election review report.

Nothing in this section shall prevent the review staff from modifying or amending its recommendations, based on the response received from the county auditor or canvassing board.

Any county auditor or other member of the county canvassing board may appeal the recommendations or the conclusion of any draft election review report to the election administration and certification board. Any appeal must be in writing, must detail specific exceptions made to the draft election review report, and must be filed with the board not later than thirty days following the issuance of the report.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-145, filed 5/19/99, effective 6/19/99.]

**WAC 434-260-150 Final election review report.** As soon as practicable, but in any event not later than forty-five days after the issuance of the draft election review report, the review staff shall issue a final election review report. The

final election review report shall be available for public inspection and copying. The report shall be made to the county canvassing board, and shall include, but not be limited to, the following:

- (1) A narrative description of any general observations by the review staff;
- (2) A narrative description of any recommendations made by the review staff;
- (3) A response by the county auditor or the county canvassing board;
- (4) A conclusion by the review staff. A copy of the final review report shall be provided to the chairperson of the election administration and certification board and a copy shall also be kept on file by the secretary of state.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-150, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.60.020. 99-12-004, § 434-260-150, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-150, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 93-18-053, § 434-60-150, filed 8/30/93, effective 9/30/93.]

**WAC 434-260-155 County review follow-up.** Following the final review report, the secretary of state shall visit the county before the next state primary or general election to verify that the county has taken the steps listed in the response to correct the problems noted in the report. If steps have not been taken, the secretary of state shall send a letter to the county canvassing board listing the areas needing correction. The letter shall be made a part of the county's review report.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-260-155, filed 8/19/05, effective 9/19/05.]

**WAC 434-260-300 Maintaining certification as an election administrator.** After attaining initial certification the election administrator is responsible for maintaining his or her certification. Maintenance of certification shall consist of:

- (1) Continuous service as an election administrator during the year for which maintenance is required;
- (2) Participation in an annual minimum of eighteen hours of continuing education, at least six hours of which shall be on election-specific training. This training may be received at any election oriented workshop or conference sponsored by any of the organizations listed in WAC 434-260-220. In addition to receiving credit for participation in election workshops or conferences, election administrators may also receive a maximum of two hours for visiting other county election departments for training purposes and for any other training approved by the elections administration and certification board. A maximum of six hours, of the eighteen required, may be derived from a surplus of hours earned in the previous year.

[Statutory Authority: RCW 29A.04.630. 05-06-036, § 434-260-300, filed 2/25/05, effective 3/28/05. Statutory Authority: RCW 29.60.020. 01-11-111, § 434-260-300, filed 5/21/01, effective 6/21/01; 99-12-004, § 434-260-300, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-300, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020. 94-07-018, § 434-60-300, filed 3/8/94, effective 4/8/94.]

**WAC 434-260-310 Application for initial certification and maintenance of certification.** The secretary of state shall make available certification application and main-



tenance forms to the county auditors. Applications to maintain certification must be submitted to the secretary of state by the county auditor by January 1 each year.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-260-310, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-260-310, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.60.020, 99-12-004, § 434-260-310, filed 5/19/99, effective 6/19/99. 98-08-010, recodified as § 434-260-310, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 29.60.020, 94-07-018, § 434-60-310, filed 3/8/94, effective 4/8/94.]

## Chapter 434-261 WAC

### COUNTING CENTER PROCEDURES

(Formerly chapter 434-61 WAC)

#### WAC

434-261-005	Definitions.
434-261-030	Receipt of ballots at intermediate collection station.
434-261-045	Secure storage.
434-261-050	Unsigned oath or mismatched signatures.
434-261-070	Manual inspection of ballots.
434-261-075	Manual inspection of ballot—Acceptability of marks or punches.
434-261-100	Ballot duplication procedures.
434-261-105	Tabulation of ballots to be continuous—Exception.
434-261-107	Daily canvassing.
434-261-110	Election results anomalies.
434-261-120	Referral of ballots to canvassing board.
434-261-130	Opening ballot container.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

434-261-080	Ballot enhancement—Optical scan systems. [Statutory Authority: RCW 29.04.080 and 29.04.210, 99-08-089, § 434-261-080, filed 4/6/99, effective 5/7/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, § 434-261-080, filed 10/13/97, effective 11/13/97.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-261-085	Ballot enhancement—Punch card systems. [Statutory Authority: RCW 29.04.210, 29.36.150, 02-07-029, § 434-261-085, filed 3/12/02, effective 4/12/02.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-261-090	Ballot duplication. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, § 434-261-090, filed 10/13/97, effective 11/13/97.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic facsimile of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title. In the case of punch cards, this means all voting

response positions are cleanly punched and removed from the card;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks or punches, and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" is the signature of a registered voter eligible to vote in the election as verified against the voter registration files. On an absentee ballot, a mark with two witnesses is a valid signature.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-261-005, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.210, 29.36.150, 02-07-029, § 434-261-005, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080 and 29.04.210, 99-08-089, § 434-261-005, filed 4/6/99, effective 5/7/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, § 434-261-005, filed 10/13/97, effective 11/13/97.]

**WAC 434-261-030 Receipt of ballots at intermediate collection station.** If an intermediate collection station is used, the collection station staff shall maintain a ballot transfer container receipt log on which shall be recorded the poll site name or number, the date and time of receipt, the seal number of each container, and any other information the auditor deems appropriate. When the last transfer container has been received and logged, or when so directed by the county auditor, the containers shall be transferred to the counting center in an enclosed vehicle accompanied by at least two employees of the county auditor's office or two representatives of different major political parties. The transfer container log sheets shall accompany the containers.

Officials used for this purpose who are not employees of the county auditor's office, political party representatives, or affiliated with a political party may meet the requirements of this rule by declaring in writing nonpolitical party affiliation. These declarations shall be retained by the auditor along with the transfer container log sheets for sixty days after the election.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-261-030, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-261-030, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210, 92-10-038, § 434-61-030, filed 5/4/92, effective 6/4/92.]

**WAC 434-261-045 Secure storage.** Received ballots must be maintained in secure storage except during processing, duplication, inspection by the canvassing board, or tabulation. Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-261-045, filed 12/28/05, effective 1/28/06.]

**WAC 434-261-050 Unsigned oath or mismatched signatures.** If a voter neglects to sign the oath on an absentee or provisional ballot envelope, or the signature on the envelope does not match the signature on the voter registration file, the auditor shall notify the voter by phone, as required by RCW

29A.60.165, if the voter has provided the auditor with a phone number. Leaving a message for the voter is not sufficient. If, at least one week prior to the certification of the election, the county auditor still has not been able to contact the voter by phone, the county auditor shall send a first class letter to the voter. If the ballot is received within one week of certification, the county auditor shall both send a letter and telephone the voter. The voter must sign the oath that appeared on the envelope.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-050, filed 8/19/05, effective 9/19/05.]

**WAC 434-261-070 Manual inspection of ballots. (1)**

Upon receiving absentee ballots and upon breaking the seals and opening the ballot containers from the precincts, all voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot will be readable by the vote tabulating system. This manual inspection is a required part of processing ballots.

(2) The inspection of ballots tabulated at the poll site is not required provided that the poll site ballot programming provisions of RCW 29A.44.340 are in effect.

(3) If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks or punches that differ from those specified in the voting instructions, but the marks clearly form a discernible and consistent pattern on the ballot to the extent that the voter's intent can be clearly determined, the county auditor may either:

(a) Refer the ballots to the county canvassing board; or

(b) Duplicate the ballots if authorized by the county canvassing board.

If the voter's intent is not clear, the ballot must be referred to the county canvassing board.

(4) In the case of punchcard ballots, if two or more corners or attachment points are detached in a punch position, the vote is valid and the ballot may be duplicated without referral to the county canvassing board.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-070, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-261-070, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-261-070, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, § 434-261-070, filed 10/13/97, effective 11/13/97.]

**WAC 434-261-075 Manual inspection of ballot—Acceptability of marks or punches. (1)** If the voter returns voting responses by mail on any form other than the ballot sent, the votes thereon shall be acceptable and tallied provided that:

(a) Only votes for offices or measures for which the voter is eligible are counted.

(b) The candidate or measure response position for which the voter is voting can be clearly identified.

(c) The ballot issued is not returned, or if returned, contains no marks or punches indicating an attempt to vote it.

(d) A valid signature on an absentee oath is on file with the county auditor.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

(2) Corrected absentee ballots shall be counted in the following manner:

(a) If a voter follows the instructions for correcting a vote, either the written instructions or other instructions given to the voter by the county auditor, the correction shall be made by duplicating the ballot and then tabulating the duplicated ballot.

(b) If a voter appears to have corrected the ballot in a manner other than as instructed, the vote for that candidate or issue shall not be tabulated unless the voter provides written instructions directing how the vote should be counted or has clearly attempted to erase a mark.

(3) If a voter has indicated a write-in vote on the ballot which duplicates the name of a candidate who already appears on the ballot for the same office, the ballot shall be duplicated to count one vote for the candidate indicated. Such a vote shall be counted pursuant to RCW 29A.60.021.

(4) If a voter signs the oath with a mark and does not have two witnesses attest to the signature, the envelope must be treated as if it were unsigned.

(5) If a ballot contains marks or punches that differ from those specified in the voting instructions, those marks or punches shall not be counted as valid votes unless there is a discernable and consistent pattern, to the extent that the voter's intent can clearly be determined. If there is such a pattern, the ballot shall be duplicated to reflect the voter's intent.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-075, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-261-075, filed 3/12/02, effective 4/12/02.]

**WAC 434-261-100 Ballot duplication procedures.**

Written procedures shall be established detailing the situations in which ballots may be duplicated. These procedures shall be included as a part of the county canvassing board manual.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-100, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, § 434-261-100, filed 10/13/97, effective 11/13/97.]

**WAC 434-261-105 Tabulation of ballots to be continuous—Exception.** The tabulation of ballots on the day of a primary or election at a polling place or counting center shall proceed without interruption or adjournment until all the ballots cast at the polls at that primary or election have been tabulated except as follows:

(1) Ballots that have been found defective and not capable of being processed by the automated system may, at the discretion of the county auditor, be held over until the working day following the election or primary, duplicated, and the duplicates then tallied no later than the day before the certification of the primary or election;

(2) If the system should become inoperative, the tally may be interrupted until the system is repaired, and if necessary, resumed the day following the election using the repaired system or an alternative method if necessary. If the election or primary includes offices or issues which the secretary of state is required by law to canvass, the auditor shall notify the secretary of state at the time of interruption, its cause and best estimate for resumption, along with the status of the tally, at the first practical opportunity. The public shall

be informed of the situation as soon as possible after the interruption if it is evident the tally will not be resumed the same day.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-105, filed 8/19/05, effective 9/19/05.]

**WAC 434-261-107 Daily canvassing.** Pursuant to RCW 29A.60.160, if a county auditor is in possession of more than twenty-five ballots that have yet to be canvassed, the county auditor in a county with a population of seventy-five thousand people or more must process and canvass the absentee ballots on a daily basis, and the county auditor in a county with a population of less than seventy-five thousand people must process and canvass the absentee ballots at least every third day. Legal holidays, as defined in RCW 1.16.050, and Sundays are exempt. The population of the county is based on the last federal census. For purposes of daily processing, the county auditor must produce a report of cumulative results. If the mail is not delivered to the county auditor's office each day that the county auditor must process ballots, the county auditor must make reasonable efforts to retrieve the mail from the post office.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-107, filed 8/19/05, effective 9/19/05.]

**WAC 434-261-110 Election results anomalies.** Precinct results, showing overvotes and undervotes, shall be inspected by the county canvassing board, or their designees, for anomalies that may indicate problems with the hardware or programming used to tabulate the votes. Anomalies may include, but are not limited to, an abnormal number of overvotes, undervotes, vote distribution, and voter turnout in any precinct, race, or jurisdiction. This inspection shall be completed within two days of the election.

Additionally, these results shall be used in the reconciliation process required in WAC 434-253-165 and RCW 29A.60.235.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-110, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-261-110, filed 2/25/05, effective 3/28/05.]

**WAC 434-261-120 Referral of ballots to canvassing board.** Whenever a precinct election officer in a precinct where ballots are being tabulated, or counting center personnel in a county where ballots are being centrally tabulated, has a question about the validity of a ballot or the votes contained on the ballot that they are unable to resolve, the ballot shall be placed in a special envelope marked "for canvassing board." The following information must be provided on the outside of the envelope:

- (1) Identification of the precinct from which the ballot originated;
- (2) The facts giving rise to the question of validity including, if applicable, the office or issue on the ballot which is affected by the question;
- (3) An identification number by which the envelope containing the ballot may be tracked.

If the question arises at a polling place, the precinct inspector shall annotate the ballot accountability sheet in a manner similar to recording other irregularly voted ballots,

shall seal the envelope and transfer it to the elections office in the special envelope for irregularly voted ballots.

If the question arises in the counting center, the counting center supervisor shall record the ballot on an irregularly voted ballot log sheet.

Ballots being held for determination of validity or voter's intent shall be provided the same security as regular voted ballots and shall be kept in a secure area when not being processed. As long as they are in the sealed envelope it is not necessary to seal them in other containers within the counting center provided they are otherwise safeguarded. Once the issue of validity has been determined, the ballots must be tabulated, if applicable, stored, and retained the same as regular voted ballots.

When the determination of validity is made, the disposition of the ballot shall be entered on the envelope and the ballot accountability sheet or the irregularly voted ballot log sheet.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-120, filed 8/19/05, effective 9/19/05.]

**WAC 434-261-130 Opening ballot container.** Whenever it is determined there is a need to open all containers to conduct a mandatory or requested recount, or when such action is directed by court order, the containers shall be opened and the security of the ballots verified only by those persons designated to do so, in writing, by the canvassing board.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-261-130, filed 8/19/05, effective 9/19/05.]

## Chapter 434-262 WAC

### CANVASSING AND CERTIFICATION OF PRIMARIES AND ELECTIONS

(Formerly chapter 434-62 WAC)

#### WAC

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**DISPOSITION OF SECTIONS FORMERLY  
CODIFIED IN THIS CHAPTER**

434-262-005	Authority and purpose. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-262-005, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-005, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-005, filed 10/3/80.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-262-035	Canvassing board—Absentee ballot signature verification. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, § 434-262-035, filed 10/13/97, effective 11/13/97.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-262-045	Canvassing mail ballots. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, § 434-262-045, filed 10/13/97, effective 11/13/97.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-262-150	Rejection of ballots or parts of ballots. [Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-262-150, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-150, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59, 92-12-083, § 434-62-150, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-262-170	Referral of ballots to canvassing board. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-170, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59, 92-12-083, § 434-62-170, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-262-180	Tabulation of ballots to be continuous—Exception. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-180, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59, 92-12-083, § 434-62-180, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.
434-262-190	Canvassing board—Opening ballot container. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-190, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59, 92-12-083, § 434-62-190, filed 6/2/92, effective 7/3/92.] Repealed by 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

**WAC 434-262-010 Definitions.** As used in these regulations:

(1) "Canvassing" is that process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is that body charged by law with the duty of canvassing ballots, of ruling on the validity of questioned or challenged ballots, of the verifying all unofficial returns as listed in the auditor's abstract of votes, and the producing of the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and chairman of the board of the county legislative authority, or their designated representatives.

(3) "Auditor's abstract of votes" is that report prepared by the county auditor which lists the number of registered voters, votes cast, all of the vote totals by precinct, or by com-

ination of precincts if applicable, absentee ballot totals, legislative district subtotals, if any, and county-wide totals. The auditor's abstract of votes must also include the reconciliation report required by RCW 29A.60.235(1). Vote totals in the auditor's abstract of votes shall be unofficial until verified and certified by the county canvassing board.

(4) "County canvass report" is the auditor's abstract of votes after verification by the county canvassing board and shall contain a certificate which shall include the oath as specified in RCW 29A.60.200, the original signatures of each member of the county canvassing board, the county seal, and all other material pertinent to the election.

(5) "Certified copy of the county canvass report" is that report transmitted by the county auditor to the secretary of state which contains registered voters and votes cast by precinct, or combination of precincts if applicable, votes cast for and against state measures, and votes cast for candidates for federal and statewide offices and for any office whose jurisdiction encompasses more than one county, absentee ballot totals for those measures and candidates, subtotals if applicable, and county-wide totals. It shall also include a certificate, bearing original signatures and an original county seal, identical to that included in the official county canvass report, and any other material which may be pertinent to the canvass of the election.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-262-010, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-262-010, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 03-15-054, § 434-262-010, filed 7/11/03, effective 8/11/03. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-010, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080. 80-15-008 (Order 80-3), § 434-62-010, filed 10/3/80.]

**WAC 434-262-013 Crediting voters.** Voters shall be credited for voting after each special, primary and general election.

(1) A voter may not be credited for voting if the ballot was voted after election day, was received after certification of the election, or will otherwise not be counted.

(2) The crediting of absentee or mail ballot voters must be completed prior to the certification of the election. The crediting of poll voters must be completed within thirty days of the election, and prior to the certification of the election when possible.

(3) The reconciliation of voters credited with ballots counted shall be completed within thirty days following certification of a primary or election. The certification must include, but is not limited to, information indicating that the number of ballots counted equals the number of voters credited. If these numbers do not match, the county auditor must take steps to reconcile the numbers and any discrepancies. If the county auditor cannot reconcile the numbers, documentation of steps taken to reconcile and any other applicable information must be included with the official reconciliation.

(4) Changes to the list of registered voters, such as new registrations, transfers, or cancellations, may not be made following a general election until the crediting reconciliation is complete. Correction of errors is allowed.

(5) The county auditor shall make an electronic or paper copy of the list of registered voters immediately following this reconciliation. Using this data, the county auditor shall

also produce validation statistics for each minor taxing district in the county. Once the list is copied and the validation statistics are complete, changes to the data base may be made.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-262-013, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-013, filed 8/19/05, effective 9/19/05.]

**WAC 434-262-015 Canvassing board—Delegation of authority.** The county auditor, prosecuting attorney, and chair of the county legislative authority, or designees as per chapter 29A.60 RCW, shall be responsible for the performance of all duties of the county canvassing board, as set forth in chapters 29A.40 and 29A.60 RCW, and the rules on canvassing adopted by the secretary of state. These duties shall be performed by the members of the board, or they may delegate in writing representatives to perform these duties. This written delegation of authority shall be filed with the county auditor prior to any person undertaking any action on behalf of the board. In no instance may the members of the county canvassing board delegate the responsibility of certifying the returns of any primary or election, of determining the validity of any challenged ballots, or of rejecting ballots. When considering the validity or rejection of ballots, the canvassing board may review the ballots individually, in batches, or as part of a report of ballots presented to the board. In the event the canvassing board determines that the signature on an absentee or provisional ballot was not made by the voter to whom the ballot was issued or that a voter attempted to vote more than once, the board must direct the county auditor to refer the ballot and any relevant material to the county prosecuting attorney.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-015, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-262-015, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, § 434-262-015, filed 10/13/97, effective 11/13/97.]

**WAC 434-262-020 Preliminary abstract of votes.** Following the election and prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. The preliminary abstract of votes must list separately votes cast by absentee ballot and at the polls, votes cast for and against measures, votes cast for candidates, overvotes and undervotes, by precinct or groups of precincts in the event that precincts have been combined in accordance with RCW 29A.16.060, for canvassing purposes. The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-020, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-262-020, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 03-15-054, § 434-262-020, filed 7/11/03, effective 8/11/03. Statutory Authority: RCW 29.04.210, 29.36.150, 02-07-028, § 434-262-020, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-020, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-020, filed 10/3/80.]

**WAC 434-262-025 Canvassing board—Notice of open public meeting.** All activities of the canvassing board

shall be open to the public, although the board may limit the number of persons observing any aspect of the process whenever, in the judgment of the board, it is necessary to do so to preserve order and to safeguard the integrity of the process. The canvassing board may adopt and promulgate rules and regulations, not inconsistent with the provisions of this section, to ensure that the process is open to the public and that the procedures themselves are performed by the board free of any outside interference. The auditor shall publish notice of the meetings of the canvassing board. Such notice or notices shall be in substantially the following form:

OPEN PUBLIC MEETING NOTICE

The canvassing board of (Name of County) County, pursuant to chapter 29A.60 RCW, will hold public meetings at (Time of Meetings), (Dates), at (Locations), to (Purpose of Meetings). These meetings of the canvassing board are open, public meetings, and shall be continued until the activity for which the meetings are held has been completed.

A record of the proceedings of the county canvassing board shall be made and maintained in the county auditor's office, and shall be available for public inspection and copying. The record shall be retained for the same time period required by law for the retention of absentee ballots.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-025, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-262-025, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, § 434-262-025, filed 10/13/97, effective 11/13/97.]

**WAC 434-262-030 Auditor's abstract of votes.** No later than the tenth day following any primary or special election and the twenty-first day following any general election the county canvassing board shall meet and canvass all ballots. Upon completion of this canvass, the board shall direct the county auditor to include all ballot totals, or legislative or congressional district subtotals if applicable, and the reconciliation report in the preliminary abstract of votes prepared pursuant to WAC 434-262-020. The ensuing report, containing a count of all ballots cast in the election, subtotal reports by legislative district, and county-wide totals shall constitute the auditor's abstract of votes.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-030, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610, 04-15-089, § 434-262-030, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-030, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-030, filed 10/3/80.]

**WAC 434-262-031 Rejection of ballots or parts of ballots.** Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

- (1) Where two ballots are found folded together, or where a voter has voted more than one ballot;
- (2) Where two ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

(3) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent;

(4) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(5) Where the voter has voted for more candidates for an office than are permissible;

(6) Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted.

Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-031, filed 8/19/05, effective 9/19/05.]

**WAC 434-262-050 Errors or discrepancies discovered during the verification of the auditor's abstract of votes.** (1) If the county canvassing board, during the verification process, discovers that errors or discrepancies exist in the auditor's abstract of votes, the board shall investigate those errors or discrepancies. They shall be empowered to take whatever corrective steps a majority of the board deems necessary, including changing or modifying the auditor's abstract of votes if the error or discrepancy is discovered in that document. The canvassing board may proceed to verify votes cast on other measures or races if a majority of the board believes that the nature of the errors or discrepancies discovered warrant further action on their part.

(2) Changes in the results of an election following a recount are not considered errors or discrepancies.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-262-050, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-050, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-050, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-050, filed 10/3/80.]

**WAC 434-262-060 Documentation of corrective action taken.** If the canvassing board decides to take corrective action with respect to errors or discrepancies described in WAC 434-262-050, the canvassing board shall prepare a written narrative of the errors or discrepancies discovered, the cause of those errors, if known, and the corrective action taken. Each member of the canvassing board must sign the written narrative and must initial the auditor's abstract of votes if it is altered or modified by the canvassing board.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-262-060, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-060, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-060, filed 10/3/80.]

**WAC 434-262-080 Transmittal of certified copy of county canvass report to the secretary of state.** Immediately following the certification of the returns of any primary, special, or general election in which state measures, federal or state offices, or legislative or judicial offices whose jurisdiction encompasses more than one county appeared on the ballot, the county auditor must transmit those returns to the

secretary of state by fax, e-mail, or other electronic means. No later than the next business day, the county auditor must send to the secretary of state a certified copy of that part of the county canvass report and, if applicable, the written narrative, covering those issues and offices.

[Statutory Authority: RCW 29A.04.611, 29A.04.530, 06-02-028, § 434-262-080, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-080, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150, 00-10-010, § 434-262-080, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-080, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-080, filed 10/3/80.]

**WAC 434-262-090 Receipt of certified copy of county canvass report by secretary of state.** The secretary of state shall ensure that all material required to be submitted pursuant to state law and these regulations has been included in the certified copy of the county canvass report transmitted to his or her office. In the event the secretary of state determines that the report is incomplete, he or she shall notify the county auditor of that fact and shall request that the missing part be forwarded immediately. No county's certified copy of the county canvass report shall be considered complete for acceptance by the secretary of state until all of the material required by statute and regulation has been received by the secretary of state. In the event the certified copy of the county canvass report is illegible or in improper form, the secretary of state shall return it and require an immediate resubmission of the report in proper or legible form.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-090, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-090, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-090, filed 10/3/80.]

**WAC 434-262-100 Canvass of returns by the secretary of state—Powers and duties.** Upon receipt of a complete certified copy of the county canvass report from a county auditor, the secretary of state shall proceed to include the results from that abstract in the official canvass of the primary, special, or general election. This shall be accomplished by adding the certified returns from each county abstract of votes in order to determine the final results for those offices and issues he or she is required by law to certify. The secretary of state shall accept the certified copy of the official abstract of votes from each county as being full, true, and correct in all respects. The secretary of state may include in the official canvass, a narrative which details or describes any apparent discrepancies discovered during the canvassing procedure, and may notify the county or counties involved of such discrepancies.

[Statutory Authority: RCW 29A.04.611, 05-17-145, § 434-262-100, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-262-100, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080, 80-15-008 (Order 80-3), § 434-62-100, filed 10/3/80.]

**WAC 434-262-105 Audit of results of votes cast on direct recording electronic device.** (1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election.

If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit;

(3) The county auditor must compare the paper records with the electronic records. The county auditor may take any necessary actions to investigate and resolve discrepancies.

(4) Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-262-105, filed 11/30/05, effective 12/31/05.]

**WAC 434-262-106 Machine recount of votes cast on direct recording electronic devices.** Machine recounts must be conducted by reloading individual ballot data packs or cartridges. The county auditor must verify all data packs or cartridges have been loaded.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-262-106, filed 11/30/05, effective 12/31/05.]

**WAC 434-262-108 Manual recount of votes cast on direct recording electronic devices.** (1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(a) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount.

(2) The county auditor must compare the hand recount results with the original results. The county auditor may take any necessary actions to investigate and resolve discrepancies.

[Statutory Authority: RCW 29A.04.611. 05-24-040, § 434-262-108, filed 11/30/05, effective 12/31/05.]

**WAC 434-262-110 Certification of primary returns by the secretary of state.** Pursuant to RCW 29A.60.240, upon completion of the canvass of each county's certified copy of the auditor's abstract of votes and no later than the third Tuesday following the primary, the secretary of state shall certify to the appropriate county auditors the returns for all state ballot measures, federal and statewide offices, and

those legislative and judicial offices whose jurisdiction encompasses more than one county. In the event the secretary of state is unable to certify all or part of a primary election by the third Tuesday following that primary because he or she has not received a certified copy of a county canvass report from one or more counties, he or she shall certify the state ballot measures and candidates for which completed abstracts have been received. The secretary of state shall also set forth, by letter to the county auditors, those reasons which render him or her unable to certify the entire primary. The certification of the remainder of the primary shall take place when all outstanding certified copies of county canvass reports have been received and filed.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-262-110, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150. 00-10-010, § 434-262-110, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-110, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080. 80-15-008 (Order 80-3), § 434-62-110, filed 10/3/80.]

**WAC 434-262-120 Certification of general election returns by the secretary of state.** Pursuant to RCW 29A.60.250, upon completion of the canvass of each county's certified copy of the auditor's abstract of votes and no later than the thirtieth day following a general election, the secretary of state shall certify to the governor, president of the senate, and speaker of the house of representatives the returns for all state ballot measures, federal and statewide offices, and those legislative and judicial offices whose jurisdiction encompasses more than one county. In the event the secretary of state is unable to certify all or part of a general election by the thirtieth day following that election because he or she has not received a certified copy of a county canvass report from one or more counties, he or she shall certify the state ballot measures and candidates for which completed abstracts have been received. The secretary of state shall also set forth, by letter to the governor, president of the senate, and speaker of the house of representatives those reasons which render him or her unable to certify the entire election. The certification of the remainder of the election shall take place when all outstanding county canvass reports have been received.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-262-120, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150. 00-10-010, § 434-262-120, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-120, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080. 80-15-008 (Order 80-3), § 434-62-120, filed 10/3/80.]

**WAC 434-262-203 Poll-site ballot reconciliation—Central count optical scan and punchcard.** Using the poll-site ballot accountability forms, the poll books, and election night precinct results, poll-site ballots shall be reconciled in the following manner:

(1) Reconciliation must begin as soon as practical after the election.

(2) Each precinct's results shall be reconciled with the precinct's ballot accountability form. The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots not counted may include, but not be limited to: Provisional ballots, ballots referred to the can-

vassing board, ballots to be duplicated, ballots with write-in votes, spoiled ballots.

(3) Any discrepancies must be investigated. At a minimum, the following areas must be checked until the discrepancy is resolved:

- (a) Check the accuracy of the ballot accountability form.
- (b) Recount the signatures in the poll book.
- (c) Check the spoiled ballots.
- (d) Check the provisional ballots.
- (e) Count the ballot stubs.
- (f) Check the poll-site supplies for ballots.
- (g) Manually count the number of ballots.
- (h) Call the poll workers.

(4) All steps to reconcile each precinct shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election can be certified.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-262-203, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-262-203, filed 2/25/05, effective 3/28/05.]

**WAC 434-262-204 Poll-site ballot reconciliation—Precinct count optical scan and direct recording devices.** Poll-site ballots shall be reconciled in the following manner:

(1) Compare the total number of votes cast from each counter at the poll-site and the number of signatures in the poll book(s).

(2) The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots not counted may include, but not be limited to: Provisional ballots, ballots referred to the canvassing board, ballots to be duplicated, ballots with write-in votes, any out-sorted ballots, spoiled ballots.

(3) Any discrepancies must be investigated. At a minimum, the following areas must be checked until the discrepancy is resolved:

- (a) Check the accuracy of the ballot accountability form.
- (b) Recount the signatures in the poll book.
- (c) Ballot counter/direct recording device results.
- (d) Check the bins in the ballot counter(s).
- (e) Check the spoiled ballots.
- (f) Check the provisional ballots.
- (g) Count the ballot stubs.
- (h) Check the poll-site supplies for ballots.
- (i) Manually count the number of ballots.
- (j) Call the poll workers.

(4) All steps to reconcile each precinct shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election may be certified.

[Statutory Authority: RCW 29A.04.611. 05-17-145, § 434-262-204, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. 05-06-035 and 05-08-065, § 434-262-204, filed 2/25/05, effective 3/28/05.]

## Chapter 434-324 WAC

### OFFICIAL STATEWIDE VOTER REGISTRATION DATA BASE

(Formerly chapter 434-24 WAC)

#### WAC

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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

434-324-015	Uniform control number. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-24-015, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-015, filed 6/3/74.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
434-324-025	Precinct codes. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-025, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-025, filed 6/3/74. Formerly WAC 434-24-030, Order 6, filed 3/3/72.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
434-324-030	Taxing district codes. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-030, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-030, filed 6/3/74. Formerly WAC 434-24-040, Order 6, filed 3/3/72.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
434-324-035	Maintenance of recent voting record. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-035, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-035, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-035, filed 6/3/74.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
434-324-050	Basic voter registration form. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-050, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-050, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-050, filed 6/3/74; Order 8, § 434-24-050, filed 6/15/72; Order 6, § 434-24-050, filed 3/3/72.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
434-324-060	Transmittal of signature cards to the secretary of state. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-060, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-060, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-060, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-060, filed 6/3/74; Order 6, filed 3/3/72.]



- 434-324-065 Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611. Exemption of transmittal of signature cards to the secretary of state. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-065, filed 7/16/04, effective 8/16/04. 98-08-010, recodified as § 434-324-065, filed 3/18/98, effective 3/18/98. Statutory Authority: RCW 20.04.080 and 29.07.120. 97-18-014, § 434-24-065, filed 8/25/97, effective 9/25/97.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
- 434-324-110 Transmittal of cancellations to the secretary of state. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-110, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-110, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-110, filed 6/3/74. Formerly WAC 434-24-110, Contents of precinct list of registered voters, Order 6, filed 3/3/72.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
- 434-324-120 Contents of precinct list of registered voters. [Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-120, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-120, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-120, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-120, filed 6/3/74; Order 6, filed 3/3/72.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.
- 434-324-160 Review of automated voter registration systems. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-160, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-160, filed 6/3/74.] Repealed by 05-24-039, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.611.

**WAC 434-324-005 Definitions.** As used in this chapter:

- (1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.
- (2) "Applicant" means a person who has applied to become a registered voter in the state of Washington.
- (3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.
- (4) "County election management system" means software used by auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.
- (5) "County registration number" means a unique identifier assigned to each registered voter by the auditor.
- (6) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.
- (7) "Late registration absentee ballot" means an absentee ballot cast by a voter who registered pursuant to RCW 29A.08.145 after the close of the regular registration period.
- (8) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.
- (9) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.
- (10) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.

(11) "Pending cancellation" means the registered voter's registration record will be canceled within a specified amount of time and he or she is not eligible to vote.

(12) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

(13) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

(14) "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW 29A.08.651.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-005, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-008 Review of county election management systems.** (1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration data base. This approval must be obtained prior to the purchase or installation of the system.

(2) A county election management system must have the capability to:

- (a) Store information required in WAC 434-324-010;
- (b) Generate a list of registered voters in a county and their registration statuses;
- (c) Track information specific to single elections, including the issuance and return of vote by mail and absentee ballots;
- (d) Scan voter registration forms; and
- (e) Store and provide access to images of signatures of registered voters.

(3) A county's election management system must conform to all of the requirements of state law and of these regulations, and if it does not, the secretary must notify the auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as that office may deem appropriate.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-008, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-010 County election management system—Applications for voter registration.** (1) Each auditor must enter and maintain voter registration records in a county election management system. Each record must contain at least the following information:

- (a) Name;
- (b) Complete residential address;
- (c) Mailing address;
- (d) County registration number;
- (e) State registration number;
- (f) Gender;
- (g) Date of birth;
- (h) Date of registration;
- (i) Applicable district and precinct codes;

(j) Five dates upon which the individual has voted since establishing that registration record, if available;

(k) Washington state driver license number, Washington state identification card number, or the last four digits of the applicant's Social Security number if he or she does not have a Washington state driver license or Washington state identification card; and

(l) A scanned image file (format .tiff) of the applicant's signature.

(2) The auditor may also assign numeric or alphabetic codes for city names in order to facilitate economical storage of the voter's address.

(3) In the case of an applicant who applies for voter registration by mail and sends a copy of an alternative form of identification for registration purposes, pursuant to RCW 29A.08.113, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was sent to the auditor.

(4) Upon entry of an applicant's information, the auditor must check for duplicate entries.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-010, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-010, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-010, filed 6/3/74; Order 6, § 434-24-010, filed 3/3/72.]

**WAC 434-324-020 County codes.** All auditors shall use the following system of two character codes for designating the county in which the voter is registered:

Adams	- AD	Lewis	- LE
Asotin	- AS	Lincoln	- LI
Benton	- BE	Mason	- MA
Chelan	- CH	Okanogan	- OK
Clallam	- CM	Pacific	- PA
Clark	- CR	Pend Oreille	- PE
Columbia	- CU	Pierce	- PI
Cowlitz	- CZ	San Juan	- SJ
Douglas	- DG	Skagit	- SK
Ferry	- FE	Skamania	- SM
Franklin	- FR	Snohomish	- SN
Garfield	- GA	Spokane	- SP
Grant	- GR	Stevens	- ST
Grays Harbor	- GY	Thurston	- TH
Island	- IS	Wahkiakum	- WK
Jefferson	- JE	Walla Walla	- WL
King	- KI	Whatcom	- WM
Kitsap	- KP	Whitman	- WT
Kittitas	- KS	Yakima	- YA
Klickitat	- KT		

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-020, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-020, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-020, filed 6/3/74; Order 6, § 434-24-020, filed 3/3/72.]

**WAC 434-324-040 Data transfer to secretary and registration status.** (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the

secretary for identity verification, outlined in RCW 29A.08.107. The application for voter registration must remain in the county election management system in pending status until the applicant's identity has been verified.

(2) Once the secretary has verified the applicant's identity pursuant to RCW 29A.08.107, the secretary must assign a state identification number, and the auditor must change the voter's registration code in the county election management system from pending status to active. If the applicant's identity has not been verified, the secretary must notify the auditor accordingly.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-040, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-055 Duplicate voter registration search conducted by secretary.** Upon receipt of an applicant's electronic voter registration record from the auditor, and on a quarterly basis pursuant to WAC 434-324-113(3), the secretary must search for potential duplicate registration records in the official statewide voter registration data base, required in RCW 29A.08.651, by comparing the applicant's name and date of birth or other identifying information provided by the applicant on the voter registration form. Pursuant to RCW 29A.08.107, if a potential duplicate is identified, the secretary must work with the auditor to determine if the registration record is a transfer, update, or duplicate. If a voter is transferring his or her registration to a new county or if any other information on the application has changed, the auditor must update the registration record pursuant to RCW 29A.08.107(4). A duplicate registration record must not be entered as a new registration record.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-055, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-075 Transfer of voter registration record between counties.** (1) Up until thirty days prior to a primary, special election, or general election, a registered voter may transfer his or her registration record by completing and submitting a new application for voter registration pursuant to RCW 29A.08.140. Upon receipt, the auditor must process the application for voter registration in the same manner as all other applications for voter registration pursuant to WAC 434-324-010.

(2)(a) If a registered voter transfers his or her registration late, as outlined in RCW 29A.08.145 between counties, the new auditor must issue the voter a late registration absentee ballot and envelope for the next primary, special election, or general election. The late registration absentee ballot must not be counted until it is confirmed that it is a valid ballot.

(b) A late registration absentee ballot must be issued in a specially marked envelope along with an instructional notice. The notice must explain why a late registration absentee ballot is being issued, that the enclosed ballot is the correct ballot for the voter to cast, and that no other ballot submitted by the voter for that same primary, special election, or general election will be counted. The auditor's contact information must be included, and it must be stated that the voter may call the auditor regarding questions. The voter's registration status in the previous county must promptly be flagged so any returned ballots will not be counted.

(c)(i) If the new county receives a late registration absentee ballot, it must confirm that the previous county did not receive a ballot from the same voter.

(ii) If the previous county does not receive a ballot from the voter, the late registration absentee ballot received by the new county must be counted. Any subsequent ballot returned to the previous county must not be counted.

(iii) If the previous county receives a ballot from the voter, it must contact the new county. If the late registration absentee ballot was not returned to the new county, the previous county must send the absentee ballot to the new county, and the new county must count only races applicable to that county.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-075, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-085 Notice of new registration or transfer.** (1) The auditor must send notification to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers his/her registration record within the county;
- (c) Transfers his or her registration record from another county within Washington state; or
- (d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The notice must acknowledge that the request of the individual has been processed and must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number;
- (e) State registration number;
- (f) The date the voter registered; and
- (g) A signature line for the voter.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-085, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-085, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-085, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-085, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-085, filed 6/3/74.]

**WAC 434-324-090 Cancellation due to death—Process and notification.** (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons information from the Social Security Administration. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a list of matching names, identified as potentially deceased voters, and deliver it to the auditor electronically. The auditor must review the list within five days and approve or reject the proposed cancellations. Upon the sixth day, if the auditor has failed to approve or reject the proposed cancellations, the official statewide voter registra-

tion data base must automatically send notification to the county to cancel the appropriate registrations.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-090, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-095 Cancellation due to death—Forms to cancel voter registration.** Pursuant to RCW 29A.08.510, the auditor must maintain a supply of, furnish to the public upon request, and include in the supplies sent to each precinct for use by the precinct election officials, forms for the purpose of permitting registered voters to request that the voter registration record of any person, whom they personally know to be deceased, be canceled.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-095, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-095, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-095, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-095, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-095, filed 6/3/74.]

**WAC 434-324-100 Felony conviction—Notice from county clerk.** Upon receiving official notice of a person's conviction of a felony as outlined in RCW 29A.08.520, the auditor must search his or her county election management system to determine whether the potential felon named in the official notice is a registered voter. If the auditor finds a match, he or she must confirm that the first name, last name, and date of birth on the official notice match the voter registration record before canceling the felon's voter registration. After canceling a felon's voter registration, the auditor must send a cancellation notice to the felon using the last known address and send notification to the secretary through the county election management system.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-100, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons and pending cancellation notifications.** (1) Once a quarter, the secretary must perform comparisons with the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies, as authorized in RCW 29A.08.520, to search for registration records of felons. The quarterly comparison must be performed prior to the first extraction or pull of absentee ballots for a primary, special, or general election. The secretary must create a list of matches by confirming that the first name, last name, and date of birth match.

(2) The list of matches must be compared to information provided by the office of the administrator for the courts and the clemency board to identify felons who have received certificates of discharge or gubernatorial pardons for all felony convictions.

(3) The secretary must not cancel the voter registration record of a voter who has received a certificate of discharge or gubernatorial pardon for all felony convictions. The secretary must flag the voter registration record to prevent future cancellation based on these previous felony convictions.

(4) If there is no record of a certificate of discharge or gubernatorial pardon for each felony conviction, the secretary must change the voter's registration status to "pending

cancellation." This change of status must be entered prior to the first extraction or pull of absentee ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in the poll book and must not receive an absentee ballot.

(5) The secretary must mail a notification letter to each felon whose status is pending cancellation. In addition to sending a copy of the notification letter to the auditor, the secretary must also send notification of the voter's pending cancellation status to the auditor through the election management system. The notification letter must be sent to the felon's last known address indicating that his or her voter registration is about to be canceled. The form must contain language notifying the felon that if the pending cancellation status is in error, the felon may contact the auditor's office to reconcile the error and request a provisional ballot. As outlined in RCW 29A.08.520, the form must also provide information on how the right to vote may be restored, as well as how to register to vote after the right to vote has been restored. The notification letter must contain substantially the following language:

Dear . . . . .,

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled as outlined in the last paragraph of this letter or by a certificate of restoration issued by the governor.

Based on name and date of birth information maintained in state voter registration records and felony conviction records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

Felon's name  
Felon's date of birth  
County of conviction  
Date of conviction  
Case/cause number

Your voter registration is pending cancellation. If you would like to dispute this finding, you have thirty days from the postmark date on the envelope to request a hearing by contacting:

County auditor  
County auditor's address  
County auditor's phone number  
County auditor's e-mail address

You may also request a provisional ballot.

If you do not dispute this finding within thirty days, your voter registration will be canceled.

Voting before the rights are restored is a class C felony (RCW 29A.84.660). The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court (RCW 9.94A.637);
2. A court order restoring civil right, issued by the sentencing court (RCW 9.92.066);
3. A final order of discharge, issued by the indeterminate sentence review board (RCW 9.96.050); or
4. A certificate of restoration, issued by the governor (RCW 9.96.020).

Further information about how to get the right to vote restored may be found at [www.secstate.wa.gov/elections/restoring.aspx](http://www.secstate.wa.gov/elections/restoring.aspx).

Sincerely,

. . . . . Secretary of State

If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-106, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-111 Voluntary cancellation of voter registration.** A voter may cancel his or her own voter registration by submitting a signed written notification to the auditor for the county in which he or she is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC 434-379-020.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-111, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-113 Voter registration list maintenance.** (1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance program in odd-numbered years.

(2) In addition to conducting quarterly comparisons to identify felons as required in WAC 434-324-106, the secretary must search the official statewide voter registration data base on a quarterly basis to ensure there are no duplicate voter registration records or deceased voter registration records maintained. Duplicate voter registration records must be processed in accordance with WAC 434-324-050, felon registration records in accordance with WAC 434-324-106, and deceased voter registration records in accordance with WAC 434-324-090.

(3) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor to determine whether a voter registration challenge is warranted, pursuant to RCW 29A.08.810. The county prosecutor must be copied on the notification.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-113, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-115 Challenge of voter's registration.**

All county auditors shall maintain a supply of, and furnish to the public on request, forms substantially similar to the sample included below for the purpose of allowing a registered voter to challenge the registration of another voter pursuant to RCW 29A.08.830. A copy of the form shall be sent to the voter, whose voter registration has been challenged and to the challenger pursuant to RCW 29A.08.840. The form shall be substantially similar to the following:

**VOTER REGISTRATION CHALLENGE FORM  
REASON FOR CHALLENGE**

Check the appropriate box below.

- ☐ The individual challenged is not a U.S. Citizen.
- ☐ The individual challenged is not at least eighteen years old.
- ☐ The individual challenged is currently being denied his or her civil rights by reason of a felony conviction.
- ☐ The individual challenged has been judicially declared mentally incompetent.
- ☐ The individual challenged does not reside at the address at which he or she is registered to vote. Under Article VI, section 4, of the Washington State Constitution, a voting residence is not lost if the person is absent due to state or federal employment, military service, school attendance, confinement in prison, or engaged in navigation at sea. State law requires the person filing the challenge to provide the address at which the challenged voter actually resides:

\_\_\_\_\_  
Voter Registration Address

\_\_\_\_\_  
Actual Address

Please describe the factual basis for the voter registration challenge:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AFFIDAVIT OF CHALLENGER**

I, \_\_\_\_\_ declare under penalty of perjury under the laws of the State of Washington that I am a registered voter in the State of Washington and that I hereby challenge the voter registration of \_\_\_\_\_. I have personal knowledge and belief that this person is not qualified to vote, or does not reside at the address given on his or her voter registration record and is also not protected by the provisions of Article VI, section 4, of the Washington State Constitution.

\_\_\_\_\_  
Signature of Challenger

\_\_\_\_\_  
Date and Place Signed

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**PROCEDURES FOR FILING A VOTER REGISTRATION**

**CHALLENGE**

**FORM**

By statute, any registered voter may challenge the right to vote of any other registered voter, up until the day before an election, by filing the attached affidavit subject to the penalties of perjury. The challenger must declare that, to his or her personal knowledge and belief, the challenged voter is not qualified to vote or does not actually reside at the address given on his or her voter registration record.

If the challenge is based on residence, RCW 29A.08.830 requires the challenger to provide the address at which the challenged voter actually resides. The challenger must also declare that, to his or her personal knowledge and belief, the challenged voter is not protected by the provisions of Article VI, section 4, of the Washington State Constitution. This provision of the Washington State Constitution protects a voter from losing his or her voting residence if the absence is due to state or federal employment, military service, school attendance, confinement in prison, or engaged in navigation at sea.

Challenges may not be based on unsupported allegations or allegations by anonymous third parties.

**HEARING**

The County Auditor shall notify the challenged voter, by certified mail, that his or her voter registration has been challenged. The notice shall request that the challenged voter appear at a hearing to be held within 10 days, and shall state the date, time, and location of the hearing. The challenger shall be provided a copy of the notice.

If either the challenger or the challenged voter is unable to appear at the hearing, he or she may submit a reply by affidavit stating, under oath, the reasons he or she believes that the voter registration is valid or invalid.

The identity of the challenger, and any third person involved in the challenge, is public record and shall be announced at the time the challenge is made.

A challenged voter may properly transfer or reregister until three days before the election by applying personally to the County Auditor.

If a challenge is filed more than 30 days before an election, the County Auditor presides over the hearing and issues a decision. If the challenge is filed less than 30 days before an election, the County Canvassing Board presides over the hearing and issues a decision.

For more information, please contact your County Auditor.

[Statutory Authority: RCW 29A.08.850. 05-17-094, § 434-324-115, filed 8/15/05, effective 9/15/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-115, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-115, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-115, filed 6/3/74.]

**WAC 434-324-118 Data auditing of county voter election management system with the official statewide voter registration data base.** Each auditor must perform data audits of its county election management system to ensure all of its data matches data in the official statewide

voter registration data base. The data audits must be performed on a periodic basis and must be performed within a reasonable amount of time prior to an election.

During data auditing, the auditor must transfer voter registration records from the county election management system to the official statewide voter registration data base for verification of voter status. The official statewide voter registration data base must verify that the voter status provided by the county election management system matches the voter status in the official statewide voter registration data base. Upon completion of this verification process, the voter's registration status is either:

(1) Confirmed, and the county is authorized to issue a ballot to the voter; or

(2) Denied because the official statewide voter registration data base indicates the voter's registration record is in pending or canceled status. The auditor must update the county election management system with the appropriate voter status. The voter is not authorized to vote.

In addition, the county election management system must update the statewide voter registration data base with the appropriate voter information.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-118, filed 11/30/05, effective 12/31/05.]

**WAC 434-324-130 Contents of list of registered voters for the public.** Pursuant to the provisions of RCW 29A.08.710, 29A.08.720 and 29A.08.740, the auditor or secretary must furnish to any person, upon request, current lists of registered voters at actual reproduction cost. The auditor must, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration file. Such lists may contain the information prescribed in RCW 29A.08.710 for each registered voter and may be in the form of computer printouts, microfilm duplicates, or electronic media copies of such information. Such voter registration lists must be used only for political purposes; commercial use of this information is punishable as provided in RCW 29A.08.740.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-130, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-130, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 98-03-033, § 434-324-130, filed 1/13/98, effective 2/13/98; 97-21-045, recodified as § 434-324-130, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-130, filed 6/3/74; Order 6, filed 3/3/72.]

**WAC 434-324-140 Requests for list of registered voters.** The auditor or secretary may require each person who requests a list of registered voters under the authority of RCW 29A.08.720 and WAC 434-324-130 to sign a request which includes penalty requirements as set forth in RCW 29A.08.720 and 29A.08.740.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-140, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-324-140, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-324-140, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-140, filed 6/3/74. Formerly WAC 434-24-130.]

[2006 WAC Supp—page 1858]

**WAC 434-324-150 Retaining voter registration records.** On an annual basis, the secretary must copy all voter registration records after the general election. By December 31st of each year, the secretary must transfer the copy to the state archives division for permanent retention.

[Statutory Authority: RCW 29A.04.611. 05-24-039, § 434-324-150, filed 11/30/05, effective 12/31/05.]

## Chapter 434-335 WAC

### ELECTRONIC VOTING REQUIREMENTS

(Formerly chapter 434-333 WAC)

#### WAC

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434-335-590	Poll site-based direct recording electronic device test notices, observers, and log of process.
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434-335-610	Parallel monitoring test decks.
434-335-620	Parallel monitoring test observers.
434-335-630	Parallel monitoring test certification.
434-335-640	Post election test.

**WAC 434-335-010 Certification of voting equipment.** All voting systems, voting devices, and vote tallying systems must be certified and approved by the secretary of state before they can be used in Washington state. In order for a voting system to be certified in Washington state, it must meet the applicable federal standards, comply with Washington state law, and, except for functions or capabilities unique to Washington state, be certified and used in at least one other state.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-010, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-020 Voting systems review board.** The voting systems review board may review voting systems for certification and make recommendations to the secretary of state based upon those reviews. The voting systems review board includes independent experts in computer science or information technology, recognized experts in election administration, and representatives of the public at large. Members of the voting systems review board are appointed to a two-year term by the secretary of state. The duties of the voting systems review board include, but are not limited to, reviewing an application for certification, as provided in WAC 434-335-090, conducting a public hearing on the application, as provided in WAC 434-335-100, and making recommendations on the application to the secretary of state, as provided in WAC 434-335-110.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-020, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-030 Initial application for certification.** Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification December 1st and ending May 30th the following year. Certification examinations and hearings are only conducted between January 1st and July 15th of each year.

(1) The application must include, but is not limited to, the following information:

(a) Description of the applicant, business address, customer references, and list of election products.

(b) Description of the equipment under review, version numbers, release numbers, operating and maintenance manuals, training materials, and technical and operational specifications.

(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system.

(d) A monetary deposit as described in WAC 434-335-080.

(e) A copy of a letter from the applicant to each independent testing authority (ITA) which:

(i) Directs the ITA to send a copy of the completed ITA qualification report to the secretary of state;

(ii) Authorizes the ITA to discuss testing procedures and findings with the secretary of state; and

(iii) Authorizes the ITA to allow the secretary of state to review all records of any qualification testing conducted on the equipment.

(f) A technical data package (TDP) conforming to the 2002 *FEC Federal Voting Systems Standards (FVSS)*, Vol. II, Sec. 2 standards that includes:

(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. FVSS, 2.2.1.e);

(ii) A system functionality description (ref. FVSS, 2.3);

(iii) A system security specification (ref. FVSS, 2.6);

(iv) System operations procedures (ref. FVSS, 2.8);

(v) System maintenance procedures (ref. FVSS, 2.9);

(vi) Personnel deployment and training requirements (ref. FVSS, 2.10);

(vii) Configuration management plan (ref. FVSS, 2.11);

(viii) System change notes (if applicable, ref. FVSS, 2.13);

(ix) A system change list, if any, of modifications currently in development; and

(x) A system usability testing report.

(2) The source code of an electronic voting system must be placed in escrow and be accessible by the secretary of state under prescribed conditions allowing source code review for system verification.

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-030, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-040 Voting system requirements.** (1) No voting device or its component software may be certified by the secretary of state unless it:

(a) Secures to the voter secrecy in the act of voting;

(b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(c) Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;

(d) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(e) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

(f) Beginning January 1, 2006, produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and

(g) Except for functions or capabilities unique to this state, has been tested and approved by the appropriate independent testing authority approved by the United States election assistance commission.

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct; and

(d) Produces precinct and cumulative totals in printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.

(5) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal independent testing authority and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-040, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-050 Closing an incomplete application.** Upon receipt of an application, the secretary of state examines the application for completeness. If the application is not complete, the secretary of state must notify the applicant in writing of the information required to complete the application. Notification must occur within thirty days of receipt of the application. If all requested information is not received within thirty days of the written notification, the secretary of state deems the application closed. Closure of an application does not prevent the applicant from submitting a new application to the secretary of state.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-050, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-060 Examination of equipment.** Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment and software to be reviewed. The examination consists of a series of functional application tests designed to insure that the system or equipment meets all applicable federal guidelines, and state law and rules. The examination may include an additional independent testing authority test at the discretion of the secretary of state. The examination shall include the set-up and conduct of two mock elections. The applicant shall provide ballot materials and programming to create these elections. The independent testing authority will provide the voting system software they tested directly to the secretary of state.

(1) The first election must replicate an even year general election.

(2) The second election must replicate an odd year primary, and include the use of split precincts and precinct election officer contests.

Both elections must feature at least ten precincts, with at least ten ballots in each precinct. The tests must include ballots of various ballot codes, including multiple candidates, cumulative reports, precinct reports, and canvass reports, as detailed in the test plan provided by the secretary of state.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-060, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-070 Additional information and equipment required.** The vendor shall provide a working model of the equipment under review for the duration of the examination. The secretary of state may, at the expense of the applicant, contract with independent testing authorities or laboratories, or experts in mechanical engineering, electrical engineering, or data processing to assist in the examination of the equipment.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-070, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-080 Deposit for examination expenses.** The voting systems review board evaluation must include, but is not limited to:

(1) A review of statutory requirements;

(2) A review of applicable federal standards;



(3) A review of the approved qualification test results released directly to the secretary of state by the federally approved independent testing authority;

(4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;

(5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;

(6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;

(7) A review of any effect the application will have on the security of the voting system;

(8) A review of any effect the application will have on the accuracy of the voting system;

(9) A review of any effect the application will have on the ease and convenience with which voters use the system;

(10) A review of any effect the application will have on the timeliness of vote reporting; and

(11) A review of any effect the application will have on the overall efficiency of the voting system.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-080, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-100 Public hearing.** The voting systems review board must conduct a public hearing, scheduled at the convenience of the secretary of state and voting systems review board. At the public hearing, the applicant must demonstrate the equipment and explain its function. The applicant must be available to answer questions from the voting systems review board and the public. The applicant may be asked to submit answers in writing if the voting systems review board is not satisfied with the completeness of answers given at the hearing.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-100, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-110 Voting systems review board report.** Following the review and public hearing, the voting systems review board must issue a report to the secretary of state. The voting systems review board may recommend for or against certification of the voting system under review. The board may also recommend that certification be contingent upon fulfillment of specific conditions or procedures with the purchase or use of the voting system in this state.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-110, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-120 Certification may be conditioned.** Certification of a voting system may be contingent upon fulfillment of additional conditions or procedures.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-120, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-130 Issuance of certification.** Based on the examination of the voting system and the recommendations of the secretary of state staff and the voting systems review board, the secretary of state may issue a certification of the system if the secretary of state determines that the system meets all requirements for certification. The certification

must include any conditions or procedures that the secretary of state deems necessary for the system to comply with Washington state law and practice. The secretary of state must notify all county auditors of the certification within thirty days.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-130, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-140 Failure to meet certification requirements.** If the secretary of state determines that the voting system fails to meet any of the requirements for certification, the applicant must be notified and allowed thirty days to submit another version of the voting system. Examination and testing of the new voting system must be conducted as if never before performed by the office of the secretary of state.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-140, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-150 Modification of certified equipment.** After a voting system is certified, any improvements or changes to the system must be submitted to the secretary of state for approval. The secretary of state will determine if the modifications require a recertification of the system or may be approved administratively.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-150, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-160 Modification of certified equipment, guidelines for administrative approval.** The secretary of state may approve an application for modification of certified equipment administratively if the application does not:

- (1) Materially affect the lawful conduct, accuracy, efficiency, capacity or security of elections;
- (2) Materially affect the convenience to the voter of the elections process; or
- (3) Otherwise result in significant modification to existing procedures used in Washington by extending the equipment's functionality.

An application approved administratively does not require examination or review by the voting systems review board.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-160, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-170 Application for administrative approval of modified voting systems or devices.** The application for review of a modification of an existing certified system must include, but is not limited to, the following information:

- (1) Description of the applicant.
- (2) Description of the equipment under review, the modification, and all version numbers and release numbers.
- (3) All changes to the operating and maintenance manuals, training materials, and technical and operational specifications required by the modification.
- (4) All certification documents from all other states that have certified the equipment with the modification.

(5) Reports for all tests conducted on the modification by an independent testing authority. The independent authority must meet the criteria established by the election assistance commission for such agents.

(6) Documentation that the modification meets all applicable federal voting equipment guidelines.

(7) A complete description, in operational and technical detail, of all differences between the previously certified equipment or system and the modified equipment or system, prepared by the applicant.

(8) A monetary deposit as described in WAC 434-335-080.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-170, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-180 Recertification of modified voting systems or devices.** If the system, or its components, is found to be sufficiently modified under the guidelines of WAC 434-335-160 that it requires an examination of the equipment by the voting systems review board and a public hearing, the secretary of state must notify the applicant in writing that the applicant must initiate the certification process outlined in WAC 434-335-030 through 434-335-130.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-180, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-190 Restricted period.** No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may receive administrative approval or certification between July 15th and December 31st of the same year.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-190, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-200 Emergency approval.** Emergency approval for a modification of an existing voting or vote tabulating system or equipment may be obtained from the secretary of state during the restricted period if failure to modify the system could materially affect the lawful conduct, efficiency, accuracy, or security of an upcoming election.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-200, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-210 Application information for emergency approval.** During the restricted period, a county auditor may apply in writing to the secretary of state for emergency approval of a modification of an existing certified system. The application must include a complete description of the modification that is required and an explanation of why failure to modify the system materially affects the lawful conduct, efficiency, accuracy, or security of the upcoming election. The application must also explain why the emergency cannot be adequately remedied with procedural processes.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-210, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-212 Temporary approval of emergency modification.** If, after reviewing the application, the secretary of state determines that an emergency exists, the

examination and testing of the proposed modification is expedited to meet the needs of the upcoming election. The secretary of state develops a test plan and audit procedures to ensure the modified system does not adversely affect the lawful conduct, efficiency, accuracy, or security of the upcoming elections. The secretary of state may consult with the voting systems review board. The requirement that the modification be certified by an independent testing authority is waived for an emergency approval. An emergency approval of a modification must state the time period it is effective.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-212, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-214 Public notice of emergency approval.** The secretary of state must notify all county auditors of the emergency approval within five days of approval. Such notice shall also be posted to a public forum such as the secretary of state's web site.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-214, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-220 Final approval.** Pursuant to WAC 434-335-150, the applicant must submit to the secretary of state a modification that incorporates a permanent fix to the problem covered by the emergency approval. The modification must be submitted in time to be approved under the normal modification application procedures provided in WAC 434-335-150 through 434-335-180.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-220, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-230 Judicial review of agency action.** Any of the following decisions entered pursuant to this chapter are final decisions of the secretary of state as to which no further review by the agency is available, subject to judicial review pursuant to chapter 34.05 RCW:

(1) The issuance or denial of certification pursuant to WAC 434-335-130;

(2) The issuance or denial of administrative approval of a modification pursuant to WAC 434-335-160;

(3) The issuance or denial of recertification of a modified system or component pursuant to WAC 434-335-180 and 434-335-220.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-230, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-240 Acceptance testing of voting systems and equipment.** Whenever a county auditor acquires a new system or an upgrade to an existing system that has been certified by the secretary of state, the county must perform acceptance tests of the equipment before it may be used to count votes at any election. The equipment must operate correctly, pass all tests, and be substantially the same as the equipment certified by the secretary of state. The minimum testing standards are described as follows:

(1) The model number, version number, release number, and any other number, name or description that identifies the product must be the same as the identifying numbers for the product already certified by the secretary of state.

(2) The county must receive all manuals and training necessary for the proper operation of the system.

(3) For a vote tabulating system, the county must perform a series of functional and programming tests that test all functions of the system. The tests must include processing a substantial number of test ballots of various ballot codes, including split precincts, multiple candidates, precinct committee officer races, cumulative reports, precinct reports, canvass reports, and any other tests the county auditor finds necessary.

(4) The county auditor must certify the results of the acceptance tests to the secretary of state, which must include version numbers of the hardware, software, and firmware installed and tested.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-240, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-250 Inclusion of the Federal Election Commission standards for voting equipment.** The 2002 election assistance commission standards concerning voting systems and software escrow are hereby included by reference except where otherwise modified by these rules and the *Revised Code of Washington*. After January 1, 2006, in order for a modification of a system that was previously certified according to 1990 Federal Election Commission voting system standards to be administratively approved, the entire voting system must be tested and approved according to the 2002 standards.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-250, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-260 Decertification of voting systems and vote tabulating systems.** (1) The secretary of state may decertify a voting system or vote tabulating system or any component thereof and withdraw authority for its future use or sale in Washington if, at any time after certification the secretary of state determines that:

(a) The system or component fails to meet the standards set forth in applicable federal guidelines or state statutes or rules;

(b) The system or component was materially misrepresented in the certification application; or

(c) The applicant has installed unauthorized modifications to the certified software or hardware.

(2) The secretary of state must provide written notice of intent to decertify to the original applicant or its successor, if known, to all county auditors, and to the public. The notice must specify the reasons why the certification of the system may be rescinded. The applicant or successor or any county auditor may, within thirty days after the issuance of the notice, file with the secretary of state a written explanation as to why the system or component should not be decertified. The secretary of state may extend or shorten the time for filing of a written explanation for good cause. After reviewing the explanation, the secretary of state may either discontinue the decertification process, in which case the system or component remains certified, or schedule a public hearing pursuant to subsection (3) of this section. If no explanation is timely filed, the secretary of state may either discontinue the decertification process or issue a final order pursuant to subsection (4) of this section.

(3) A decertification proceeding shall constitute an adjudicative proceeding pursuant to chapter 34.05 RCW.

(a) The secretary of state adopts the model rules of procedure as set forth in chapter 10-08 WAC, except as they may be inconsistent with this chapter. The proceeding may be conducted as an emergency adjudicative proceeding pursuant to RCW 34.05.479 if the secretary of state finds that immediate action is required to preserve the integrity of the electoral process.

(b) The secretary of state shall designate the presiding officer.

(c) The certification remains valid pending resolution of the administrative proceeding, unless the secretary of state finds, following notice and opportunity for written or oral input, which may be expedited, that the public interest requires that the decertification should take effect on a temporary basis pending hearing.

(d) The argument in favor of decertification may be presented by an employee of the secretary of state or by an assistant attorney general. Other parties may be represented by a certified election administrator or by any person permitted to appear by WAC 434-180-560.

(4) The presiding officer or secretary shall enter an order specifying the system or component at issue, whether or not it is decertified, the effective date of any decertification, and explain the basis for the decision. The effective date of decertification shall not be less than five days after the entry of the order, but may be delayed to any reasonable date. An order issued by the secretary pursuant to subsection (2) of this section is a final order. An order issued by the presiding officer is regarded as an initial order unless the secretary of state, assistant secretary of state, deputy secretary of state, or director of elections presides, in which case the decision of the presiding officer shall be final and no further review is available within the agency.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-260, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-270 Definition of official logic and accuracy test.** As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-270, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-280 Logic and accuracy test conduct.** The county must provide adequate personnel to properly operate the ballot counting equipment. Whenever possible, the equipment should be operated during the test by the same person or persons who will be responsible for the ballot count on election day. If any error in programming or mechanical function is detected, the cause must be determined and corrected, and an errorless test completed before the primary or election.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-280, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-290 Logic and accuracy test observers.** The official logic and accuracy test must be observed by at least one representative of each major political party, if

representatives have been appointed by the parties and are present at the test. The party observers must be instructed as election observers by the county auditor. The official logic and accuracy test must be open to candidates, the press, and the public. If any observer hinders or disturbs the logic and accuracy test process, the observer may be removed from the test area. An observer who has been removed from a logic and accuracy test may also be barred from future tests. The absence of observers may not delay or stop the test from being conducted.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-290, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-300 Logic and accuracy testing of voting systems and equipment—State primary and general election.** At least three days before each state primary or general election, the office of the secretary of state must test the programming of the vote tabulating system to be used at that primary or election. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. The test must also verify that the machines are functioning to specifications.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-300, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-310 Procedure for conduct of delayed primary or general election emergency logic and accuracy test.** If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to the processing of any official ballots through the tabulating system. If no representative of the office of the secretary of state is able to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-310, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-320 Logic and accuracy test scheduling and preparation—State primary and general election.** Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests. The office of the secretary of state must notify each county of the date and time of the test at least thirty days before the primary or election. The county is responsible for preparing the vote tabulating system and testing it before the actual logic and accuracy test. The vote tabulating system must be fully programmed, cleaned, maintained, tested, and functional before the official logic and accuracy test. The county must notify the parties, press, public, and candidates of the date and time of the test.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-320, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-330 Logic and accuracy test certification—State primary and general election.** The county auditor or deputy, the secretary of state representative, and

any political party observers must certify that the test was conducted in accordance with RCW 29A.12.130. This certification must include verification of the version numbers for all software, firmware, and hardware of the voting system used. Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All programming materials, test results, and test ballots must be securely sealed until the day of the primary or election. These items may be sealed and stored separately.

If, for any reason, any changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-330, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-340 Logic and accuracy testing of voting systems and equipment—Special elections.** At least three days before each special election, the programming for the vote tabulating system to be used at that election must be tested for logic and accuracy. The test should verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. The test must be conducted by processing a preaudited group of ballots, marked with a predetermined number of votes, for each candidate and for or against each measure. For each office that has two or more candidates and for each measure, the test must include an undervote and an overvote.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-340, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-350 Logic and accuracy test deck preparation—Special elections.** When a new test deck is required under WAC 434-335-480, the test deck used for the official logic and accuracy test must be prepared by the county auditor.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-350, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-360 Logic and accuracy test scheduling and preparation—Special election.** The county auditor is responsible for preparing the vote tabulating system and testing it before the official logic and accuracy test. The vote tabulating system must be fully programmed, cleaned, maintained, tested, and functional before the official logic and accuracy test. The county must notify the parties, press, public, and candidates of the date and time of the test.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-360, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-370 Logic and accuracy test certification—Special election.** The county auditor or deputy, and any political party observers present must certify that the test has been conducted in accordance with RCW 29A.12.130. Copies of this certification must be retained by the county auditor. All programming materials, official test results, and test ballots must be securely sealed until the day of the primary or election. These items may be sealed and stored separately.

If, for any reason, any changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-370, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-380 Logic and accuracy test preparation—State primary and general election—Punchcard systems.** The test deck or decks used for the official logic and accuracy test must be maintained by the county auditor. Information describing the candidates, offices, ballot formats, ballot positions, pages or planning matrix, prepunches, number of appearances of each office, and all other information required to select the test precincts and predict the results must be provided to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-380, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-390 Punchcard test deck maintenance and storage.** Each county employing a punchcard balloting system must maintain a permanent deck of logic and accuracy test ballots. The test ballots must contain a distinct pattern of votes. The deck may be used for all official logic and accuracy tests and for programming tests conducted in preparation for official logic and accuracy tests. The permanent test deck must be securely stored, except when in use for an actual test.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-390, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-400 Punchcard adjustment standards and tests.** Prior to all official logic and accuracy tests, a test must be conducted by each county employing a punchcard balloting system to confirm that the ballot stock to be used in the election meets system specifications for card weight, thickness and length. The test should also confirm that the ballot counter is properly reading prepunches and voting response areas.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-400, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-410 Punchcard test precinct selection—State primary and general elections.** Prior to the official logic and accuracy test the office of the secretary of state must review the provided election materials to select a representative sample of precincts and ballot styles sufficient to cover all offices and issues appearing in the election. The representative sample constitutes the official logic and accuracy test, unless conditions warrant the office of the secretary of state to conduct a complete test of every precinct.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-410, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-420 Punchcard testing requirements prior to official logic and accuracy test.** Prior to the official logic and accuracy test, each county employing a punchcard

balloting system must thoroughly test all programming and system components. The test must verify the office programming by thoroughly testing each individual office, the ballot style logic to insure that all offices are included in the intended precincts and combinations, and that the program is accumulating all offices. The county auditor or deputy must certify that these tests have been completed prior to the official logic and accuracy test.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-420, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-430 Definitions.** For optical scan voting systems:

(1) "Voting response area" means the area on the ballot, as specified in the instructions, in which the voter may place a mark to indicate a vote.

(2) "Scanning area" means the portions of the ballot that the system scans in order to read the vote marks made by voters.

(3) "Ballot marking code" means the coded patterns printed on the ballot intended to identify the ballot style to the ballot counting system.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-430, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-440 Logic and accuracy test deck preparation—State primary and general election—Optical scan systems.** The test deck or decks used for the official logic and accuracy test for optical scan systems may, at the discretion of the secretary of state, be prepared by either the office of the secretary of state, the county, or the county's ballot printer applicant. Information describing the candidates, offices, ballot formats, ballot positions, ballot styles, number of appearances of each office, and all other information required to create the test decks must be available to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-440, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-450 Optical scan test ballot selection—State primary and general elections.** Prior to the official logic and accuracy test the office of the secretary of state must review the provided election materials with the county and select a representative sample of ballot styles sufficient to cover all offices and issues appearing in the election. If the office of the secretary of state prepares the test deck, the county auditor must send to the secretary of state blank ballots of the selected ballot styles as soon as the ballots are available. The representative sample constitutes the official logic and accuracy test, unless conditions warrant the office of the secretary of state to conduct a complete test of every precinct.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-450, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-460 Optical scan read head adjustment standards and tests.** Prior to each state primary and

general election, read heads of optical scan central counting systems must be cleaned and tested to insure that the reader is functioning within system standards.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-460, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-470 Optical scan test ballot scan area alignment tests.** Prior to the official logic and accuracy test, each county employing an optical scan balloting system must conduct a test to confirm that the voting response area printed on the ballot face is aligned properly with the scanning area of the ballot counter. This test must also confirm that the ballot counter is properly interpreting each ballot marking code.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-470, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-480 Optical scan ballot marking code program test.** Prior to the official logic and accuracy test each county employing an optical scan balloting system must thoroughly test all programming and system components. The test must verify the office programming by thoroughly testing each individual office, the ballot style logic to insure that all offices are included on the intended ballot faces, and that the program is accumulating all offices. The county auditor or deputy must certify that these tests have been completed prior to the official logic and accuracy test.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-480, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-490 Poll site-based optical scan ballot counter preparation and testing.** The logic and accuracy test of a poll site-based optical scan ballot counter must be performed by the county during preparation of the counter prior to distribution. As the ballot counter is programmed and prepared for distribution, a test of the ballot counter and the ballot styles must be performed. This test must establish that the ballot counter is functioning within system standards. All ballot styles programmed for the ballot counter must be processed by the ballot counter in order to insure that it is correctly counting and accumulating every office. The test must also establish that the printed voter response areas are correctly aligned with the scanning area. After all tests are performed and the ballot counter is ready for distribution, the ballot counter must be sealed and the seal number recorded. These tests serve as the official logic and accuracy test of poll site-based optical scan ballot counters.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-490, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-500 Poll site-based optical scan ballot counter test notices, observers, and log of process.** A log must be created during the testing of a poll site-based optical scan ballot counter. The log must record the time and place of each test, the precinct numbers, the seal number, and the machine number of each ballot counter, and the initials of each person testing and each person observing. The log must be included in the official logic and accuracy test materials. The processes described in WAC 434-335-490 are open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

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[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-500, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-510 Definitions.** For direct recording electronic voting systems:

"Access device" is the device that is used by the voter to access the ballot at a direct recording electronic voting device. It may be a card or other media.

"Calibration" is the touch screen setting on a direct recording electronic voting system that controls the voter response area.

"Controller" is a component of a direct recording electronic voting system that allows the poll worker to add information to an access device to allow a voter to access the correct ballot style.

"Parallel monitoring" is a process designed to detect the potential presence of malicious code in the software of a voting machine. It requires a specific number of voting machines to be removed from random poll sites before voting begins. These machines are then test-voted throughout election day.

"Response area" is the area on the ballot face that records the voter's choice.

"Touch screen" is a type of computer interface on a voting device that allows the voter to select a choice by touching the screen.

"Voter verified paper record" is a paper record of a voter's choices. The paper record may be verified by the voter before the vote is cast.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-510, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-520 Logic and accuracy test plan preparation—State primary and general election—Direct recording electronic systems.** The test plan used for the official logic and accuracy test prior to a state primary or election for a direct recording electronic system may, at the discretion of the secretary of state, be prepared by either the office of the secretary of state or the county. Information describing the candidates, offices, ballot formats, ballot styles, number of appearances of each office, and all other information required to create the test plan must be available to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county auditor must advise the office of the secretary of state before the 20th day prior to the primary or election.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-520, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-530 Direct recording electronic test ballot selection—State primary and general election.** Prior to the official logic and accuracy test the office of the secretary of state must review the provided election materials to select a representative sample of ballot styles sufficient to cover all offices and issues appearing in the election. The representative sample constitutes the official preelection logic and accuracy test, unless conditions warrant the office of the secretary of state to conduct a complete test of every precinct.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-530, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-540 Direct recording electronic calibration adjustment standards and tests.** Prior to each state primary and election, the calibration settings of each direct recording electronic device using touch screen technology must be tested to insure that the response areas are functioning within system standards.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-540, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-550 Direct recording electronic voting response area tests.** Prior to the official logic and accuracy test, and prior to the programming of the poll-site direct recording electronic devices, each county employing a direct recording electronic balloting system must conduct a test to confirm that the voting response area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to insure that the programming is correctly counting and accumulating every office and candidate.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-550, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-560 Direct recording electronic ballot marking code program test.** Prior to the official logic and accuracy test, each county employing a direct recording electronic balloting system to confirm that the voting response areas indicated on all ballot faces are programmed correctly. The county must test all ballot styles on at least one device to insure that the programming is correctly counting and accumulating every office and candidate.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-560, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-570 Direct recording electronic system logic and accuracy test notices, and observers.** At the discretion of the secretary of state, a county may conduct its official preelection logic and accuracy test of the county's direct recording electronic system at a date and time prior to the logic and accuracy test of the county's optical scan system. The official preelection logic and accuracy test of the county's direct recording electronic system is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320. The results of the test must be included in the official logic and accuracy test materials and combined with the test results of all other voting systems used by the county to confirm an adequate integration of the systems.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-570, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-580 Poll site-based direct recording electronic voting device preparation and testing.** All logic and accuracy testing of poll site-based direct recording electronic systems must be performed by the county prior to system distribution. A representative from the office of the secretary of state may attend these tests in whole or in part. As each voting device is programmed and prepared for distribution, a test of the response area, ballot styles, and ballot counter must be performed. These tests must establish that the device and the tabulation software is functioning within system standards. The tests must also establish that the voter

response areas of each touch screen, if used, are correctly calibrated. These tests must also confirm that all ballot styles appropriate for the poll site to which the device will be deployed are properly issued by the controller. After all functionality tests are performed and the machine is ready for distribution, each machine must be sealed and the seal number recorded. This serves as the official logic and accuracy test of poll site-based direct recording electronic devices.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-580, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-590 Poll site-based direct recording electronic device test notices, observers, and log of process.** A log must be created during the testing of a poll site-based direct recording electronic machine. The log must record the time and place of each test, the precinct numbers, the seal number, and the machine number of each voting device, and the initials of each person testing and each person observing. This log must be included in the official logic and accuracy test materials. The processes described in WAC 434-335-580 are open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-590, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-600 Parallel monitoring test.** Parallel monitoring is conducted on the day of a state primary or election in each county using direct recording electronic voting devices without a voter verified paper record at the poll sites. Before voting begins, one randomly chosen machine must be removed from one percent, rounded up, of the poll sites. Throughout the day, these machines are attended by personnel of the office of the secretary of state, and test votes are cast by individuals selected by the county auditor. The test votes are predetermined in order to compare results at the end of the day. A casting of test votes may be recorded by videotape for verification. All results of the parallel monitoring test are public.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-600, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-610 Parallel monitoring test decks.** The test deck or decks used for the parallel monitoring test are prepared by the office of the secretary of state. Paper ballots sufficient so that all ballot formats are represented must be available to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.

Expires January 1, 2006.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-610, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-620 Parallel monitoring test observers.** The parallel monitoring test may be observed by at least one representative of each major political party, if representatives have been appointed by the parties and are present at the test. The party observers must be instructed as election observers by the county auditor. The test is open to candi-

dates, the press, and the public. If any observer hinders or disturbs the parallel monitoring test, the observer may be removed from the test area. An observer who has been removed from a parallel monitoring test may also be barred from future tests. The absence of observers may not delay or stop the test from being conducted.

Expires January 1, 2006.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-620, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-630 Parallel monitoring test certification.** The county auditor or deputy, the secretary of state representative, and any political party observers must certify that the test was conducted in accordance with WAC 434-335-600. This certification must include verification of the version numbers for all software, firmware, and hardware of the voting system used. Copies of this certification must be retained by the secretary of state and the county auditor and may remove that observer from the test results, and test ballots must be securely sealed with the records of the election.

Expires January 1, 2006.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-630, filed 8/29/05, effective 9/29/05.]

**WAC 434-335-640 Post election test.** Following a state primary or election and prior to certification of the election as required by RCW 29A.60.190, a post election logic and accuracy test is conducted on the devices selected for the parallel monitoring test in each county using direct recording electronic voting devices without a voter-verified paper record. The post election logic and accuracy test is substantially the same as the preelection logic and accuracy test conducted pursuant to WAC 434-335-580 through 434-335-590. The county must certify to the state that the test was performed.

Expires January 1, 2006.

[Statutory Authority: RCW 29A.04.611. 05-18-022, § 434-335-640, filed 8/29/05, effective 9/29/05.]

## Chapter 434-379 WAC

### VERIFICATION OF SIGNATURES ON REFERENDUM AND INITIATIVE PETITIONS (Formerly chapter 434-79 WAC)

#### WAC

434-379-005	Filing of an initiative—Fee—Required documents.
434-379-007	Certificate of review.
434-379-010	Random sampling procedure.
434-379-020	Signature verification standard.

**WAC 434-379-005 Filing of an initiative—Fee—Required documents.** A person desiring to file with the secretary of state a petition to enact a proposed measure to the legislature or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people, may do so by filing the following documents:

- (1) A legible copy of the measure proposed, or the act or part of such act on which a referendum is desired;
- (2) A notarized affidavit that the sponsor is a legal voter;
- (3) A filing fee of five dollars for each measure submitted.

[2006 WAC Supp—page 1868]

[Statutory Authority: RCW 29A.04.611 and 43.07.120. 05-12-116, § 434-379-005, filed 5/31/05, effective 7/1/05.]

**WAC 434-379-007 Certificate of review.** After filing the documents listed in WAC 434-379-005, a copy of the documents is sent to the code reviser. The code reviser shall issue a certificate of review certifying that he or she has reviewed the measure and that any recommendations have been communicated to the sponsor. Within fifteen working days after the date that the secretary of state submits the proposed measure to the code reviser's office, the sponsor shall file the measure and the certificate of review with the secretary of state for assignment of a serial number. The secretary of state shall refuse to make such assignment unless the measure is accompanied by a certificate of review that has substantially the same topic as the measure.

[Statutory Authority: RCW 29A.04.611 and 43.07.120. 05-12-116, § 434-379-007, filed 5/31/05, effective 7/1/05.]

**WAC 434-379-010 Random sampling procedure.** In the verification of signatures on initiative and referendum petitions, under RCW 29A.72.230, the following statistical test may be employed:

(1) Take a minimum three percent unrestricted random sample of the signatures submitted;

(2) Check each signature sampled to determine the number of valid signatures in the sample, the number of signatures in the sample which are invalid because the individual signing is not registered or the signature is improper in form, and the number of signatures which are duplicated in the sample;

(3) Calculate an allowance for the chance error of sampling by multiplying the square root of the number of invalid signatures in the sample by 1.5;

(4) Estimate the upper limit of the number of signatures in the population which are invalid by dividing the sum of the invalid signatures in the sample and the allowance for the chance error of sampling by the sampling ratio, i.e. the number of signatures sampled divided by the number of signatures submitted;

(5) Determine the maximum allowable number of pairs of signatures in the population by subtracting the sum of the number of signatures required by Article II, Section 1A of the Washington state constitution and the estimate of the upper limit of the number of invalid signatures in the population from the number of signatures submitted;

(6) Determine the expected number of pairs of signatures in the sample by multiplying the square of the sampling ratio by the maximum allowable number of pairs of signatures in the population;

(7) Determine the acceptable number of pairs of signatures in the sample by subtracting 1.65 times the square root of the expected number of pairs of signatures in the sample from the expected number of pairs of signatures in the sample;

(8) If the number of pairs of signatures in the sample is greater than the acceptable number of pairs of signatures in the sample, each signature shall be canvassed to determine the exact number of valid signatures;

(9) If the number of pairs of signatures in the sample is less than the acceptable number of pairs of signatures in the



sample, the petition shall be deemed to contain sufficient signatures and the serial number and ballot title shall be certified to the state legislature as provided in RCW 29A.72.230 or to the county auditors as provided in RCW 29A.72.250.

[Statutory Authority: RCW 29A.04.611 and 43.07.120. 05-12-116, § 434-379-010, filed 5/31/05, effective 7/1/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-379-010, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-379-010, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.79.200 and 29.04.080. 97-17-035, § 434-79-010, filed 8/13/97, effective 9/13/97. Statutory Authority: RCW 29.79.200. 78-08-032 (Order 78-2), § 434-79-010, filed 7/17/78.]

#### **WAC 434-379-020 Signature verification standard.**

A signature on a petition sheet must be matched to the signature on file in the voter registration records. The following characteristics must be utilized to evaluate signatures to determine whether they are by the same writer:

- (1) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;
- (2) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;
- (3) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;
- (4) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

A single distinctive trait is insufficient to conclude that the signatures are by the same writer. There must be a combination or cluster of shared characteristics. Likewise, there must be a cluster of differences to conclude that the signatures are by different writers.

[Statutory Authority: RCW 29A.04.611, 29A.04.530. 06-02-028, § 434-379-020, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611 and 43.07.120. 05-12-116, § 434-379-020, filed 5/31/05, effective 7/1/05.]

### **Chapter 434-840 WAC**

#### **ADDRESS CONFIDENTIALITY PROGRAM**

##### **WAC**

434-840-005	Definitions.
434-840-020	Exercise of program participant's privileges.
434-840-030	Certification renewal.
434-840-040	Certification withdrawal, invalidation, expiration, and termination.
434-840-070	Agency exemption request.
434-840-080	Service of process.
434-840-110	Proof of program participant's authority.
434-840-310	Protected records voter application.
434-840-320	Maintaining protected records voter information.
434-840-330	Mailing protected records voter ballots.

**WAC 434-840-005 Definitions.** For the purposes of this chapter:

- (1) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.
- (2) "Agency" means an office, department, division, bureau, board, commission, or other statutory unit of state or local government or any functional subdivision of that agency.
- (3) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advo-

cacy, counseling, referral, or shelter services to victims of sexual assault, domestic violence, or stalking who has been designated by the respective agency, and has been accepted by the secretary of state to assist individuals with threat assessment, safety planning, determining whether the program's services can help keep the victim safe, and the completion and submission of the ACP application.

(4) "Authorization card form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.

(5) "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

(6) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual residential address the agency is incapable of fulfilling its statutory duties and obligations.

(7) "Protected records voter" means a program participant who has applied and qualified as a service voter, as provided under RCW 29A.04.163, with ongoing absentee ballot voter status, as provided under RCW 29A.40.140.

(8) "Record" means any information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(9) "Substitute mailing address" means the mailing address designated by the secretary of state which shall not be the program participant's residential address as documented on her or his application for program participation.

(10) "Residential address" means the physical location where the participant resides for which the participant is requesting confidentiality.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-005, filed 6/9/05, effective 7/10/05. Statutory Authority: RCW 29A.04.610. 04-15-089, § 434-840-005, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 40.24.090. 98-19-063, § 434-840-005, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-005, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-020 Exercise of program participant's privileges.** (1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) A program participant shall show her or his authorization card to the agency official creating a new record and request address confidentiality through the use of the substitute mailing address as it appears on the authorization card, in lieu of her or his actual location.

(3) The agency official creating a new record may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant. The agency official may call the program to verify an individual's current participation status in the program.

(4) An agency shall accept the substitute mailing address unless the agency has received a written exemption from the

secretary of state pursuant to RCW 40.24.050 and WAC 434-840-070.

[Statutory Authority: RCW 40.24.090, 05-13-059, § 434-840-020, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-020, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23, 91-20-074, § 434-840-020, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-030 Certification renewal.** (1) A program participant may renew her or his program certification by filing with the address confidentiality program: (a) Her or his current authorization card; (b) a properly completed renewal application form; and (c) a new authorization card form. The program participant shall provide all the information required on the renewal application form and date and sign the form.

(2) The address confidentiality program shall: (a) Certify a program participant, who has filed a properly completed renewal application form, to participate in the program for an additional four year term unless the certification is withdrawn or invalidated before that date; (b) issue to the program participant a new authorization card which includes the program participant's name, authorization code, substitute mailing address, certification expiration date, and signature.

[Statutory Authority: RCW 40.24.090, 05-13-059, § 434-840-030, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-030, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23, 91-20-074, § 434-840-030, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-040 Certification withdrawal, invalidation, expiration, and termination.** (1) A program participant may withdraw from program participation by submitting to the address confidentiality program: Written notification of withdrawal and her or his current authorization card. Certification shall be terminated on the date of receipt of this notification. If the program participant requests cancellation but does not return her or his current authorization card and/or does not submit written notification of the request, the secretary of state may, at his/her discretion, cancel program participation based solely on the verbal request.

(2) The address confidentiality program shall terminate a program participant's certification and invalidate her or his authorization card if: (a) The program participant's certification term has expired and certification renewal has not been completed; (b) the address confidentiality program has determined that false information was used in the application process; or (c) the program participant fails to respond to the program's request for verification of the participant's residential address.

(3) The address confidentiality program may terminate a program participant's certification and invalidate her or his authorization card if: (a) The program participant no longer resides at the residential address on file, and has not provided at least two days' prior notice in writing of a change of address; (b) first class mail, certified mail, or a service of process document forwarded to the program participant by the address confidentiality program is returned as nondeliverable, refused, or unclaimed; or (c) the program participant obtains a legal change of identity.

(4) The address confidentiality program shall send written notification of the termination to the participant's last known mailing or residential address. The program partici-

pant shall have five business days in which to appeal the termination under procedures developed by the secretary of state.

(5) The address confidentiality program shall notify the appropriate authorized personnel when a participant has been terminated from the program. The authorized personnel shall transmit to the address confidentiality program all appropriate administrative records pertaining to the participant. The transmitting agency is no longer responsible for maintaining record confidentiality for a terminated program participant under chapter 40.24 RCW.

[Statutory Authority: RCW 40.24.090, 05-13-059, § 434-840-040, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-040, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23, 91-20-074, § 434-840-040, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-070 Agency exemption request.** (1) An agency requesting an exemption under RCW 40.24.050, must provide in writing to the secretary of state: (a) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual; (b) identification and description of the specific record or record series for which the exemption is requested; (c) identification of the individuals who will have access to the record; (d) explanation of how the agency's acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified above; and (e)(i) explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures; and, where appropriate, (ii) description of any agency procedural change(s) that could be made that would allow it to accept the substitute address and meet its statutory or administrative obligations and an estimate of implementation time needed.

(2) The secretary of state shall file and review an agency's request for an exemption.

(3) During the review, evaluation and appeal of an agency's exemption request, the agency shall accept the use of a program participant's substitute address.

(4) The secretary of state's determination to grant or withhold a requested exemption shall be based on, but not limited to, an evaluation of the information provided under subsection (1) of this section in conformance with the statutory standard of a bona fide statutory or administrative requirement for the use of a program participant's actual address.

(5) If the secretary of state determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's actual address information and that the actual address information will be used only for those statutory and administrative purposes, the secretary may issue a written exemption for the agency. When granting an exemption, the secretary may include: (a) An agency's obligation to maintain the confidentiality of a program participant's address information; (b) limitations on use and access to that address information; (c) term during which the exemption is authorized for the agency; (d) designation of the record format on which the address information may be maintained; (e) designation of an address information disposition date after which the agency may no longer maintain a record of the address information; and (f) any other provisions and

qualifications determined appropriate by the secretary of state.

(6) When a program participant requests use of the substitute address in a record, and the agency has received an exemption for that record, the agency shall immediately provide a copy of the written exemption to the requesting program participant. The agency shall notify the address confidentiality program of the occurrence and denial of the program participant's request.

(7) The secretary of state's denial of an agency exemption request shall be made in writing and include a statement of the specific reasons therefore.

(8) An agency may appeal the denial of its request by resubmitting its written request together with additional data, information, and an explanation of corrective action taken to alleviate concerns and considerations included in the secretary of state's denial determination.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-070, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-070, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-070, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-080 Service of process.** (1) The secretary of state shall be an agent of the program participant upon whom any summons, writ, notice, demand, or process may be served.

(2) Service on the secretary of state of any such summons, writ, demand, notice, or process shall be made by mailing to the substitute address or by delivering to the secretary of state at his/her office in Olympia, WA: (a) Two copies of the summons, writ, notice, demand, or process; and (b) twenty-five dollars service-of-process fee for each action or document filed.

(3) If a summons, writ, notice, demand, or process is served on the secretary of state, the secretary of state shall immediately forward a copy to the program participant at the participant's current mailing address shown on the records.

(4) The secretary of state shall maintain in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the secretary of state for that participant under RCW 40.24.030 (1)(b), which shall include the date of such service and the secretary of state's action.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-080, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-080, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-080, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-110 Proof of program participant's authority.** (1) When a program participant requests name and address confidentiality for marriage or voting records, authorized personnel shall check the authorization card to confirm that the term of program participation has not expired and that the program participant's signature on the authorization card matches that on the acknowledgement form.

(2) Authorized personnel may make a photocopy of the program participant's authorization card. The authorization card shall be immediately returned to the program participant. The photocopy shall be kept with the confidential marriage or voting records for this program participant during the

time the records are filed and maintained by the county auditor or county recording officer. The authorized personnel may call the program to verify an individual's current participation status in the program.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-110, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-110, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-110, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-310 Protected records voter application.** (1) A program participant shall notify the appropriate county authorized personnel of her or his request for confidentiality in voting records by appearing in person before the appropriate county authorized personnel. The program participant shall: (a) Present her or his program authorization card; (b) cancel any previously existing voter registration; and (c) apply to vote by providing all the information required on the address confidentiality program ongoing absentee ballot application.

(2) The program participant shall disclose to the authorized personnel the actual address of her or his residence only for the purpose of determining proper precinct and district designations.

(3) An application for protected records voter status and an absentee ballot to be issued to the participant in person, may be made no later than the day before an election. An application for protected records voter status and an absentee ballot to be mailed to the substitute mailing address shall be made no later than twenty working days before the first election in which the program participant wishes to vote.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-310, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-310, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-310, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-320 Maintaining protected records voter information.** All records pertaining to a protected records voter shall be maintained in a manner ensuring that these records are accessible only to authorized personnel. Location information (including, but not limited to, residential address, county, precinct, taxing district, legislative or congressional district) for a protected records voter shall not be maintained on any voter registration data base and shall not be publicly accessible regardless of the type of records management system except as provided by RCW 40.24.060.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-320, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-320, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-320, filed 9/26/91, effective 10/27/91.]

**WAC 434-840-330 Mailing protected records voter ballots.** At least twenty days before every special, primary, or general election, authorized personnel shall review all protected records voter files and forward the appropriate ongoing absentee ballot for each protected records voter via the substitute mailing address.

The county authorized personnel shall maintain a record of ballots sent to protected records voters and a record of ballots returned. This record shall be maintained in accordance with WAC 434-840-320.

[Statutory Authority: RCW 40.24.090. 05-13-059, § 434-840-330, filed 6/9/05, effective 7/10/05; 98-19-063, § 434-840-330, filed 9/16/98, effective

10/17/98. Statutory Authority: 1991 c 23. 91-20-074, § 434-840-330, filed 9/26/91, effective 10/27/91.]

## Title 446 WAC

### STATE PATROL

#### Chapters

**446-20**      **Employment—Conviction records.**  
**446-65**      **Commercial motor vehicle regulations.**

#### Chapter 446-20 WAC

#### EMPLOYMENT—CONVICTION RECORDS

#### WAC

446-20-600	Fees.
446-20-610	Superintendent of public instruction—Prospective educational employees—Fees.
446-20-630	Department of social and health services—Child care licensing—Fees.

**WAC 446-20-600 Fees.** (1) A nonrefundable fee of thirty-five dollars shall accompany each request for conviction records submitted for a name and date of birth background check or a ten-dollar fee for a name and date of birth electronic request, thirty dollar fee if the request is submitted by fingerprint card at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee of twenty-four dollars shall be charged for fingerprint cards submitted for federal searches. It shall be the responsibility of the Washington state patrol to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee of thirteen dollars shall be charged for taking fingerprint impressions by the Washington state patrol. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The Washington state patrol identification and criminal history section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(5) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

[Statutory Authority: RCW 10.97.100, 43.43.742, 05-03-034, § 446-20-600, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 43.43.742 through 43.43.845 and chapter 10.97 RCW. 99-07-050, § 446-20-600, filed 3/15/99, effective 4/15/99. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-600, filed 8/26/96, effective 9/26/96.]

**WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees.** (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. One fingerprint card is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW as follows:

(a) The fee for the state search is twenty dollars for school district employees.

(b) The fee for the state search is thirty dollars for persons applying for their certification or for contractual employees.

(c) The fee for the FBI search is twenty-four dollars.

(d) In addition, an eleven-dollar processing fee will be charged for each fingerprint background check processed under chapter 28A.410 RCW. The Washington state patrol will reimburse the superintendent of public instruction eleven dollars for each fingerprint background check processed under this chapter for applicants who are certificated, contractual or classified.

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors shall pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

[Statutory Authority: RCW 43.43.830 - 43.43.845, 05-07-141, § 446-20-610, filed 3/23/05, effective 4/23/05. Statutory Authority: RCW 43.43.830 - [43.43.]845 and 1998 c 346. 98-19-039, § 446-20-610, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-610, filed 8/26/96, effective 9/26/96.]

**WAC 446-20-630 Department of social and health services—Child care licensing—Fees.** (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. One fingerprint card is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Department of social and health services (DSHS) shall process fingerprint background checks under chapter 74.15 RCW. Under "reason fingerprinted," cards will be marked "DSHS Child Care Licensing RCW 74.15.030" or "DSHS Child Care Licensing RCW 74.15.030 DDD."

(3) Department of social and health services, division of children and family services (DCFS) shall pay the expense and submit a waiver of fee form on licensees if the background check expense would work a hardship on the licensee. The six-dollar processing fee will not be applicable when a waiver of fee form is submitted to the Washington state patrol or the fingerprint card is marked "volunteer."

(4) A monthly billing account will be established for the DSHS division of developmental disabilities (DDD). The six-dollar processing fee will not be applicable on any fingerprint cards indicated as "DDD."

(5) Each month the Washington state patrol shall prepare a billing statement and detail report for waiver of fee forms from DCFS and for all DDD fingerprint cards submitted.

(6) All fees collected under chapter 74.15 RCW, will be deposited into the Washington state patrol fingerprint identification account.

(7) Nonrefundable fees are to be charged to:

(a) "DSHS child care licensing RCW 74.15.030" (division of children and family services (DCFS)) as follows:

(i) The fee for the state search is thirty dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(iii) A six-dollar processing fee.

(b) "DSHS division of children and family services (DCFS) for fee waivers" as follows:

(i) The fee for the state search is thirty dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(c) "DSHS child care licensing RCW 74.15.030 division of developmental disabilities (DDD)" as follows:

(i) The fee for the state search is thirty dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(d) "DSHS child care licensing RCW 74.15.030" division of developmental disabilities "volunteers" as follows:

(i) The fee for the state search is thirty dollars.

(ii) The FBI fee shall be eighteen dollars on those fingerprint cards clearly designated as "volunteer" pursuant to provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

(iii) "Chapter 74.15 RCW" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

[Statutory Authority: RCW 43.43.830 - 43.43.845. 05-07-157, § 446-20-630, filed 3/23/05, effective 4/23/05. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-630, filed 8/26/96, effective 9/26/96.]

## Chapter 446-65 WAC

### COMMERCIAL MOTOR VEHICLE REGULATIONS

#### WAC

446-65-010

Transportation requirements.

#### WAC 446-65-010 Transportation requirements. (1)

The Washington state patrol hereby adopts the following parts, and any amendments thereto, of Title 49 Code of Federal Regulations, for motor carriers used in intrastate or interstate commerce, in their entirety: Parts 350 Commercial motor carrier safety assistance program, 365 Rules governing applications for operating authority, 380 Special training requirements, 387 Minimum levels of financial responsibility for motor carriers, 390 General, 391 Qualification of drivers, 392 Driving of motor vehicles, 393 Parts and accessories necessary for safe operation, 395 Hours of service of drivers, 396 Inspection, repair, and maintenance, 397 Transportation of hazardous materials; driving and parking rules, provided, however, motor carriers operating vehicles with a gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating solely intrastate, and not used to transport hazardous materials in a quantity requiring placarding, are exempt from Parts 390 General, 391 Qualifications of drivers, 392 Driving of motor vehicles, 395 Hours of service, and 396 Inspection, repair, and maintenance.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Agricultural operations exceptions:

(a) Agricultural operations transporting agricultural products other than Class 2 material (Compressed Gases), over roads, other than the National System of Interstate Defense Highways, between fields of the same farm, is excepted from part 397 when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier.

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 CFR 173.24, 173.24a, and 173.24b.

(b) The transportation of an agricultural product to or from a farm within one hundred fifty miles of the farm, is excepted from the requirements of 49 CFR part 172 subpart G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 CFR adopted in this section.

(C) Formulated liquid agricultural products in specification packaging of fifty-eight gallon capacity or less, with closures manifolded to a closed mixing system and equipped with a positive dry disconnect device, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(4) Copies of Title 49 CFR, parts 390 through 397, now in force are on file at the code reviser's office, Olympia and at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Additional copies may be available for review at Washington state patrol district headquarters offices, public libraries, Washington utilities and transportation commission offices, and at the United States Department of Transportation, Bureau of Motor Carrier Safety Office, Olympia. Copies of the CFR may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

[Statutory Authority: RCW 46.32.020. 05-20-090, § 446-65-010, filed 10/5/05, effective 11/5/05; 05-04-002, § 446-65-010, filed 1/19/05, effective 2/19/05. Statutory Authority: RCW 46.48.170. 98-19-043, § 446-65-010, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 46.33.020. 96-22-035, § 446-65-010, filed 10/31/96, effective 12/1/96. Statutory Authority: RCW 46.32.020. 95-13-080, § 446-65-010, filed 6/20/95, effective 7/21/95;

94-01-178, § 446-65-010, filed 12/22/93, effective 1/22/94; 91-06-066 (Order 90-005), § 446-65-010, filed 3/1/91, effective 4/1/91.]

# **Title 456 WAC**

## **TAX APPEALS, BOARD OF**

### **Chapters**

- 456-09**      **Formal hearings—Practice and procedure.**
- 456-10**      **Informal hearings—Practice and procedure.**

### **Chapter 456-09 WAC**

## **FORMAL HEARINGS—PRACTICE AND PROCEDURE**

### **WAC**

- 456-09-001      Purpose and application of chapter.
- 456-09-010      Distinction between formal and informal hearing and converting an appeal.
- 456-09-110      Definitions.
- 456-09-120      Organization and office.
- 456-09-130      Quorum.
- 456-09-140      Meetings of the board.
- 456-09-210      Appearance and practice before the board.
- 456-09-215      Notice of appearance by representatives.
- 456-09-220      Rules of professional conduct.
- 456-09-300      Commencing the appeal.
- 456-09-310      Contents of notice of appeal.
- 456-09-315      Deadlines for submitting the notice of appeal.
- 456-09-325      Date and manner of submitting the notice of appeal.
- 456-09-330      Amendments to notice of appeal.
- 456-09-335      Response.
- 456-09-340      Intervention.
- 456-09-345      Service of papers on parties and proof of service.
- 456-09-510      Limitation on discovery.
- 456-09-520      Subpoena.
- 456-09-530      Settlement conference.
- 456-09-540      Prehearing conference.
- 456-09-545      Summary judgment.
- 456-09-550      Time in which evidence, briefs, and replies must be submitted.
- 456-09-552      Amicus.
- 456-09-555      Motions.
- 456-09-560      Postponement, continuance, and extensions of time.
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- 456-09-570      Notice of hearing.
- 456-09-575      Notice of hearing to limited-English speaking parties.
- 456-09-740      Testimony under oath.
- 456-09-742      Recording devices.
- 456-09-745      Failure to attend and hearing on the record.
- 456-09-750      Dismissal, stipulation, and withdrawal of actions.
- 456-09-755      Rules of evidence and admissibility criteria.
- 456-09-765      Official notice.
- 456-09-910      Assistance to board.
- 456-09-915      Presentation of posthearing evidence.
- 456-09-920      Initial or final decision.
- 456-09-925      Initial decision.
- 456-09-930      Petition for review of an initial decision, replies, and disposition.
- 456-09-955      Petition for reconsideration of a final decision.
- 456-09-960      Record on appeal.

### **DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 456-09-150      Meetings of the board. [Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-150, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-150, filed 5/2/89.] Repealed by

05-19-091, filed 9/20/05, effective 10/21/05. Statutory Authority: RCW 82.03.170.

456-09-160      Form and size of documents. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-160, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-170      Docket number. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-170, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-320      Notice of appeal—Filing and service. [Statutory Authority: RCW 82.03.170. 98-22-039, § 456-09-320, filed 10/29/98, effective 11/29/98; 95-05-033 (Order 95-01), § 456-09-320, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.160. 90-11-104, § 456-09-320, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-320, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-350      Notice of appeal—Response. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-350, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-350, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-355      Parties in exemption appeals. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-355, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-360      Intervention. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-360, filed 5/2/89.] Repealed by 05-19-091, filed 9/20/05, effective 10/21/05. Statutory Authority: RCW 82.03.170.

456-09-365      Conversion of hearing. [Statutory Authority: RCW 82.03.170. 98-22-039, § 456-09-365, filed 10/29/98, effective 11/29/98; 95-05-033 (Order 95-01), § 456-09-365, filed 2/8/95, effective 3/11/95; 94-07-044, § 456-09-365, filed 3/10/94, effective 4/10/94; 91-07-038 (Order 91-01), § 456-09-365, filed 3/15/91, effective 4/15/91; 89-10-056 (Order 89-02), § 456-09-365, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-410      Service of papers. [Statutory Authority: RCW 82.03.170. 98-22-039, § 456-09-410, filed 10/29/98, effective 11/29/98; 89-10-056 (Order 89-02), § 456-09-410, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-420      Method of service. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-420, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-430      Service of papers—When complete. [Statutory Authority: RCW 82.03.170. 98-22-039, § 456-09-430, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-430, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-430, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-440      Proof of service—Certificate. [Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-440, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-440, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-610      Conferences—Two types. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-610, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-615      Settlement conference—Purpose. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-615, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

456-09-620      Settlement conference—When held. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-620, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

- 456-09-625 Settlement conference—Agreements. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-625, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-630 Prehearing conference—Purpose. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-630, filed 5/2/89.] Repealed by 05-19-091, filed 9/20/05, effective 10/21/05. Statutory Authority: RCW 82.03.170.
- 456-09-635 Prehearing conference—When held. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-635, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-640 Prehearing conference—Documentary evidence. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-640, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-645 Prehearing conference—Excerpts from documentary evidence. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-645, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-650 Prehearing conference—Failure to supply prehearing information. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-650, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-655 Prehearing conference—Agreements. [Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-655, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-655, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-705 Advance submission of evidence—Delivery to adverse party. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-705, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-705, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-710 Hearing—Setting of time and place. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-710, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-710, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-715 Continuance—Extensions of time. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-715, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-720 Teleconference proceeding. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-720, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-725 Briefs. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-725, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-725, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-730 Hearing—Notice of hearing—Time—Contents. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-730, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-730, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-730, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-732 Hearing—Notice to limited-English speaking parties. [Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-732, filed 5/22/90, effective 6/22/90.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-735 Hearing—Standard and scope of review. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-735, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-760 Rules of evidence—Admissibility criteria. [Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-760, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-760, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-770 Official notice—Material facts. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-770, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-775 Motions—Application—Requirements. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-775, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-935 Petition for review and replies. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-935, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-935, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-935, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-940 Finality of initial decision. [Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-940, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-940, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-945 Final decision following initial decision—Record. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-945, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-945, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-945, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-950 Final decision—Precedential decisions. [Statutory Authority: RCW 82.03.170. 02-14-034, § 456-09-950, filed 6/25/02, effective 7/26/02; 89-10-056 (Order 89-02), § 456-09-950, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

**WAC 456-09-001 Purpose and application of chapter.** (1) This chapter concerns administrative matters of the board of tax appeals (board) and explains how adjudicative proceedings are conducted before the board in accordance with the Administrative Procedure Act, chapter 34.05 RCW. This chapter augments but does not supplant the provisions of chapter 82.03 RCW.

(2) The rules of practice and procedure contained in this chapter govern the conduct of formal hearings before the board and will be construed to secure the just, speedy, and economical determination of every action.

(3) To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and found in chapter 10-08 WAC, these rules shall prevail.

(4) Where procedures are not covered by this chapter and chapter 10-08 WAC, the board may, upon its own motion or upon written application by any party, refer to and apply any rule provided for in the superior court civil rules.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-001, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-010 Distinction between formal and informal hearing and converting an appeal.** (1) In all

appeals over which the board has jurisdiction, a party making an appeal may elect in writing, with its notice of appeal, either a formal or informal hearing. Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of this chapter. Informal hearings are conducted pursuant to chapter 456-10 WAC. Failure to elect in writing a formal or informal hearing at the time of submitting the notice of appeal shall result in the proceeding being conducted as informal.

(a) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted thereto.

(b) Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

(c) Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

(2) The appeal may be converted from a formal to an informal proceeding as provided below.

(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.

(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-010, filed 6/21/05, effective 8/1/05; 94-07-044, § 456-09-010, filed 3/10/94, effective 4/10/94; 89-10-056 (Order 89-02), § 456-09-010, filed 5/2/89.]

**WAC 456-09-110 Definitions.** As used in this chapter, the following terms shall have the following meaning:

(1) "Board" means the board of tax appeals as described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers or agents of the board of tax appeals.

(2) "Presiding officer" or "hearing officer" shall mean any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board.

The presiding officer shall have authority as provided by WAC 10-08-200 and chapter 34.05 RCW.

(3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.

(4) "Respondent" means a person, natural or otherwise, who is named as a responding party in any appeal before the board of tax appeals.

(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and this chapter.

(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.

(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.

(8) "Party" means any person who in a proceeding before the board is an appellant, respondent, or an intervenor as allowed in WAC 456-09-340.

(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.

(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-110, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-110, filed 5/2/89.]

**WAC 456-09-120 Organization and office.** The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.

The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915. The phone number of the board office is 360-753-5446; its fax number is 360-586-9020; its electronic mail address is [bta@bta.state.wa.us](mailto:bta@bta.state.wa.us). Information about the board is available at its web site at <http://bta.state.wa.us>.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-120, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-120, filed 5/2/89.]

**WAC 456-09-130 Quorum.** Two members of the board shall constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures and may act although one position on the board may be vacant. One member or designated hearing officer may hold hearings and take testimony. The findings of such member or hearing officer shall not become final until approved by a



majority of the board in accordance with WAC 456-09-925 and 456-09-930.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-130, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-130, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-130, filed 5/2/89.]

**WAC 456-09-140 Meetings of the board.** Regular public meetings of the board will be held at its principal office or such other place as the board designates at 9:30 a.m. on the second Friday of each month.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-140, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-140, filed 5/2/89.]

**WAC 456-09-210 Appearance and practice before the board.** Practice before the board in formal proceedings shall be limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;
- (3) An authorized officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;
- (4) County assessors or their duly authorized representative;
- (5) Certified public accountants licensed in Washington; and
- (6) Other persons permitted by law.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-210, filed 6/21/05, effective 8/1/05; 91-07-038 (Order 91-01), § 456-09-210, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-210, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-210, filed 5/2/89.]

**WAC 456-09-215 Notice of appearance by representatives.** Persons who represent parties in their appeal before the board must submit a notice of appearance to the other parties and an original and three copies to the board. The notice must include the name of the parties, the docket number if known, the representative's name, address, phone number, fax number, and e-mail address.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-215, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-220 Rules of professional conduct.** All persons appearing in proceedings before the board, whether on their own behalf or in a representative capacity, shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of Washington.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-220, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-220, filed 5/2/89.]

**WAC 456-09-300 Commencing the appeal.** (1) Persons wishing to make an appeal must submit to the board an original notice of appeal and a copy of the order or determination that is being appealed. The board will transmit a copy of the notice of appeal and a copy of the order or determina-

tion that is being appealed to the respondent(s) within thirty days of its receipt by the board.

(2) The board will acknowledge to the appellant in writing receipt of a notice of appeal.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-300, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-310 Contents of notice of appeal.** (1) For all appeals, an appellant must submit to the board a notice of appeal that substantially contains the following:

- (a) Appellant's name, mailing address, telephone number, and that of the representative, if any.
- (b) Name of the respondent together with respondent's mailing address.

When the respondent is a government agency or agencies, the board may add respondents in order to ensure that all necessary persons are a party to the appeal.

(c) The date of the order or determination from which the appeal is taken together with a copy of the order, decision, or application appealed from.

(d) The nature of the tax.

(i) In excise tax cases, the amount of the tax in controversy and the period covered thereby;

(ii) In property tax cases, the parcel number of the property under appeal, the year for which the valuation has been determined, the full value as determined by the local board of equalization, and a declaration of true and fair value as alleged by the appellant; and

(iii) In property tax exemption cases, the parcel number of the property under appeal, the year(s) for which the exemption is at issue, the basis under which exempt status should be granted or denied, and the use of the property.

(e) Specification of the issue to be decided by the board.

(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.

(g) A notice of intention that the hearing be held pursuant to the Administrative Procedure Act.

(h) The relief sought.

(i) The signature of the appellant or the appellant's representative.

(2) The board may, upon motion of a party or upon its own motion, require a more complete statement of the claim or defense or any matter stated in any notice of appeal.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-310, filed 6/21/05, effective 8/1/05; 98-22-039, § 456-09-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-310, filed 5/2/89.]

**WAC 456-09-315 Deadlines for submitting the notice of appeal.** (1) The jurisdiction of the board to hear an appeal is limited to those appeals submitted within the deadlines stated in this section. Any appeal to the board shall be submitted within the time required by the statute governing the respective agency or proceeding involved. All time periods set forth below are expressed in calendar days including, but not limited to the following:

(a) Appeals taken pursuant to RCW 82.03.190, thirty days from the mailing of the determination.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130, thirty days from the mailing of the decision.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, thirty days from the mailing of the determination.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapters 84.12 and 84.16 RCW, thirty days from the mailing of the order.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, fifteen days after the mailing of the certification.

(f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, thirty days from the mailing of the notification.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, thirty days from the mailing of the ordinance.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, thirty days after the publication of the rate.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the sixtieth day after the date of final adoption.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, thirty days from the mailing of the determination.

(2) If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday, the submission shall be considered timely if performed on the next business day.

(3) Any party may, by motion, challenge the jurisdiction of the board in any appeal. The board may, upon its own motion, raise such jurisdictional issues.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-315, filed 5/2/89.]

**WAC 456-09-325 Date and manner of submitting the notice of appeal.** (1) The date of submitting a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is hand delivered. The board's date stamp placed thereon shall be evidence of the date of receipt. If the notice of appeal is mailed, the postmark will control and shall be evidence of the date of submission.

(2) All documents may be submitted with the board via fax machine or electronic mail transmission. However, the submission will not be deemed complete and the board will not acknowledge receipt of the notice of appeal as provided

in WAC 456-09-300 unless the following procedures are strictly observed:

(a) Documents received by fax machine or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax machine or computer shall be evidence of the date and time of receipt of transmission.

(b) The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.

(c) All fax or electronic transmissions are sent at the risk of the sender.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-325, filed 6/21/05, effective 8/1/05; 98-22-039, § 456-09-325, filed 10/29/98, effective 11/29/98; 95-05-033 (Order 95-01), § 456-09-325, filed 2/8/95, effective 3/11/95; 94-07-044, § 456-09-325, filed 3/10/94, effective 4/10/94; 91-07-038 (Order 91-01), § 456-09-325, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-325, filed 5/2/89.]

**WAC 456-09-330 Amendments to notice of appeal.** A notice of appeal may be amended as a matter of right within thirty days from the date the notice of appeal was received by the board. Thereafter, a party may amend the notice of appeal upon agreement in writing by the adverse party or when granted by the board. Motions to amend the notice of appeal shall be freely granted and may be denied only upon a showing by the adverse party of unreasonable and unavoidable hardship. Motions to amend must comply with WAC 456-09-555 and 456-09-345.

Amendments to the notice of appeal shall not extend any applicable jurisdictional deadline for appeal to the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-330, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-330, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-330, filed 5/2/89.]

**WAC 456-09-335 Response.** The respondent may submit an original and three copies of a response to the notice of appeal with the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-09-345.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-335, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-335, filed 5/2/89.]

**WAC 456-09-340 Intervention.** (1) Any person or agency whose interest may be substantially affected by an appeal may petition the board to be granted status as an intervenor in the appeal.

(2) In determining whether a petitioner qualifies as an intervenor, the presiding officer shall apply the rules of the superior courts of this state.

(3) If the petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The presiding officer may timely grant or deny each petition and specify conditions, if any.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-340, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-340, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-340, filed 5/2/89.]

**WAC 456-09-345 Service of papers on parties and proof of service.** (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board shall be served upon all counsel and representatives of record and to unrepresented parties or upon their agents designated by them or by law.

(a) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial delivery company.

(b) Service by mail shall be regarded as completed upon deposit in the United States mail, as evidenced by the postmark, properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission and deposit on the same day in United States mail. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(2) Where proof of service is required by statute or rule, receipt of the papers by the board, together with one of the following, shall constitute proof of service:

(a) An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-345, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-345, filed 5/2/89.]

**WAC 456-09-510 Limitation on discovery.** (1) Insofar as applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such

statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

(2) The board may limit discovery upon motion by any party.

(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules. The board may condition use of discovery on a showing of necessity and unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-510, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-510, filed 5/2/89.]

**WAC 456-09-520 Subpoena.** Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. Parties wishing to issue a subpoena must comply with the rules in WAC 10-08-120.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-520, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-520, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-520, filed 5/2/89.]

**WAC 456-09-530 Settlement conference.** (1) At any time prior to hearing, the board may, upon its own motion or upon written application by a party, order a settlement conference. The conference shall be scheduled with not less than fourteen days' notice to each party at a time and place fixed by the board and conducted in a form and manner prescribed by the board with notice to the parties.

(2) In the event the appeal does not settle, hearing on the matter shall be set. The presiding officer of the hearing will not be the person who conducts the settlement conference.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-530, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-530, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-530, filed 5/2/89.]

**WAC 456-09-540 Prehearing conference.** (1) The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences to consider:

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Dates by which the parties must provide documentary evidence to the board and to other parties;

(g) The method for identifying exhibits and other attachments to briefs, motions, and other pleadings;

(h) The number of copies of documentary evidence, briefs, motions and other pleadings to be submitted to the board; and

(i) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by teleconference or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the board shall issue an order reciting the action taken at the conference, and the agreements made by the parties concerning all of the matters considered. The order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) Documentary evidence not submitted in accordance with the prehearing conference order may not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to comply with the order.

(5) Nothing in this rule shall be construed to limit the right of the parties to attempt settlement at any time.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-540, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-540, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-540, filed 5/2/89.]

**WAC 456-09-545 Summary judgment.** A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-09-555.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-545, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-550 Time in which evidence, briefs, and replies must be submitted.** In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board within the times stated below.

(1) Documentary evidence which is to be introduced at hearing shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten business days prior to hearing. Each page of documentary evidence shall indicate whether it is submitted by the appellant or respondent and shall be numbered. Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-09-750.

(2) An original and three copies of briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least fifteen calendar days prior to hearing.

(3) An original and three copies of reply briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten calendar days prior to hearing.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-550, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-550, filed 5/2/89.]

**WAC 456-09-552 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before the board may by motion request status as an amicus in the case.

The motion must comply with WAC 456-09-555 and 456-09-345.

(2) The motion requesting amicus status must include a statement of the following:

(a) Applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) Applicant's familiarity with the issues involved in the proceeding before the board and with the scope of the arguments presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues.

(3) The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus curiae from any person deemed to be substantially affected by a proceeding before the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-552, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-555 Motions.** (1) Any application for an order or ruling or a request for relief from any provision of this chapter is a motion. Every motion, unless made during hearing, shall be in writing and shall include the following:

(a) A statement of the relief or order sought;

(b) The reason for the relief or order;

(c) A statement that the moving party has made a good faith effort to confer with the other party to resolve the subject matter of the motion;

(d) The amount of time needed for argument;

(e) Whether court reporting services are requested; and

(f) Shall include proof of service pursuant to WAC 456-09-345.

(2) All motions shall be properly captioned and signed by the party or their representative.

(3) At the discretion of the board, the hearing on motion may be by teleconference or in person.

(4) A response to the motion shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 within ten business days following the date of service of the motion.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-555, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-560 Postponement, continuance, and extensions of time.** (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date.

(3) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with

WAC 456-09-555 and 456-09-345. The board shall promptly schedule a conference to hear argument and rule on the request. Requests for continuance will not be granted absent a showing of good cause.

(4) This section shall not extend any applicable time for appeal to this board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-560, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-560, filed 5/2/89.]

**WAC 456-09-565 Teleconference proceeding.** (1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing, pre-hearing, or settlement conference may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence to be submitted sufficiently in advance of the proceeding.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-565, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-570 Notice of hearing.** (1) Notice of a hearing will be mailed to all parties and to all persons having submitted written petitions to intervene not less than twenty calendar days before the hearing date unless a different period is required by law. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(2) The notice shall state that if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired; or to describe the reasonable accommodations requested.

(3) Defects in notice may be waived if the waiver is knowing and voluntary.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-570, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-570, filed 5/2/89.]

**WAC 456-09-575 Notice of hearing to limited-English speaking parties.** (1) When an agency is notified or otherwise made aware that a limited-English-speaking person is a party, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, either:

(a) Shall be written in the primary language of the party; or

(b) Shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the

English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-575, filed 6/21/05, effective 8/1/05.]

**WAC 456-09-740 Testimony under oath.** (1) All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of chapter 5.28 RCW.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the board, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-740, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-740, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-740, filed 5/2/89.]

**WAC 456-09-742 Recording devices.** (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-742, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-742, filed 5/22/90, effective 6/22/90.]

**WAC 456-09-745 Failure to attend and hearing on the record.** (1) When a party to these proceedings has, after notice, failed to attend a hearing, a motion for default or dismissal may be sought by any party to the proceedings or raised by the board upon its own motion. Any such order shall include a statement of the grounds for the order and shall be served upon all parties to the proceeding.

Within ten business days after service of the default order or dismissal under this section, the party against whom the order was entered may submit to the board together with proof of service pursuant to WAC 456-09-345 a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an entry of dismissal, default, or final order.

(2) Upon stipulation by both parties, an appeal may be submitted to the board on the record and the attendance of a party may be excused. However, the board in its discretion may require attendance for argument.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-745, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-745, filed 5/2/89.]

**WAC 456-09-750 Dismissal, stipulation, and withdrawal of actions.** Any action may be dismissed by the board for any of the following reasons.

(1) When all parties so stipulate. Stipulations on the value of property shall contain the parcel number, assessment year, the agreed upon value of the subject property, and a brief statement supporting the agreed upon value.

(2) As a matter of right when the appellant requests in writing to withdraw the appeal prior to the scheduled hearing.

(3) Upon motion of the appellant at the hearing prior to the presentation of the respondent's case.

(4) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

(5) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-750, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-750, filed 5/2/89.]

**WAC 456-09-755 Rules of evidence and admissibility criteria.** (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the board, the offered evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The board may exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The board may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the board may refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-755, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-755, filed 5/2/89.]

**WAC 456-09-765 Official notice.** (1) The board may take official notice of the following:

(a) Any judicially cognizable facts;

(b) Any matter of public record;

(c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by petition for review if such notice is taken in an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-09-955. Such controversy shall concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-765, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-765, filed 5/2/89.]

**WAC 456-09-910 Assistance to board.** (1) The board may obtain assistance concerning the appeal of any case within the scope of RCW 82.03.130 (1)(b) (appeals from a county board of equalization) from the staff of the department of revenue as provided by RCW 82.03.160. The board will notify the parties of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue. Parties may recommend an alternative to the board to achieve the same objectives without contacting the department of revenue.

(2) Any evidence from the department of revenue concerning assistance requested under this section shall only be presented in open hearing after notice to all parties.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-910, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-910, filed 5/2/89.]

**WAC 456-09-915 Presentation of posthearing evidence.** Unless requested by the board, no posthearing evidence will be accepted unless such evidence could not reasonably have been anticipated or discovered prior to hearing. The board may request that the parties submit posthearing briefing or proposed findings of fact and conclusions of law.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-915, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-915, filed 5/2/89.]

**WAC 456-09-920 Initial or final decision.** Every decision, whether initial or final, shall:

(1) Be correctly captioned as to the name of the board and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(6) Contain an initial or final decision disposing of all contested issues; and

(7) Contain a statement describing the available posthearing remedies.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-920, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-920, filed 5/2/89.]

**WAC 456-09-925 Initial decision.** (1) An initial decision shall be prepared when:

(a) An appeal has been heard by only one member of the board;

(b) An appeal has been heard by only two members of the board at a time when there is no vacancy on the board and the two members cannot agree on a conclusion;

(c) An appeal has been heard by a hearing officer; or

(d) The board shall otherwise elect to do so.

(2) If a petition for review as provided in WAC 456-09-930 is not submitted to the board within twenty calendar days

of the date of mailing of the initial decision, the initial decision shall be deemed the final decision of the board unless the decision specifies otherwise.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-925, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-925, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-925, filed 5/2/89.]

**WAC 456-09-930 Petition for review of an initial decision, replies, and disposition.** (1) Any party to an adjudicative proceeding may make a petition for review of an initial decision.

(2) The petition for review shall be made, by mail or otherwise, with the board within twenty calendar days of the date of mailing of the initial decision unless the decision specifies otherwise together with proof of service pursuant to WAC 456-09-345.

(3) The petition for review shall specify the portions of the initial decision to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may make a reply to a petition for review. The reply shall be made, by mail or otherwise, with the board together with proof of service pursuant to WAC 456-09-345 within ten business days of the date of the letter acknowledging receipt by the board of the petition for review.

(5) The disposition may be in the form of a written order denying the petition and adopting the initial decision as the final decision, granting the petition and issuing a final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which review was sought, within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-930, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-930, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-930, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-930, filed 5/2/89.]

**WAC 456-09-955 Petition for reconsideration of a final decision.** (1) After a final decision has been issued, any party may submit a petition for reconsideration with the board as provided by RCW 34.05.470. Such petition must be made, by mail or otherwise, within ten business days from the mailing of the final decision, and shall state the specific grounds upon which relief is requested. The petition for reconsideration shall be submitted to the board and served upon all parties and representatives of record in compliance with WAC 456-09-345. The board may require or a party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response together with proof of service pursuant to WAC 456-09-345.

(2) The petition shall be deemed denied if, within twenty calendar days from the date the petition is received by the board, the board does not either dispose of the petition; or provide the parties with a written notice specifying the date by which it will act on the petition.

(3) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-955, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-955, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-955, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-955, filed 5/2/89.]

**WAC 456-09-960 Record on appeal.** (1) When an appeal is taken to superior court from a decision of the board rendered in a formal proceeding, the appealing party is responsible for ordering and paying for the transcript of the testimony from the court reporter.

(2) If a petition for judicial review of a final order is made, by stipulation the parties may agree to shorten the record to be filed with the court. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved as allowed in RCW 34.05.566.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-960, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-960, filed 5/22/90, effective 6/22/90.]

## Chapter 456-10 WAC INFORMAL HEARINGS—PRACTICE AND PROCEDURE

### WAC

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**DISPOSITION OF SECTIONS FORMERLY  
 CODIFIED IN THIS CHAPTER**

- 456-10-130 Use of formal rules in informal proceedings. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-130, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-170 Form and size of documents. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-170, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-180 Docket number. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-180, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-320 Notice of appeal—Filing and service. [Statutory Authority: RCW 82.03.170. 98-22-040, § 456-10-320, filed 10/29/98, effective 11/29/98; 95-05-032 (Order 95-02), § 456-10-320, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-320, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-320, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-340 Jurisdiction—Issue raised by board—Procedure. [Statutory Authority: RCW 82.03.170. 95-05-032 (Order 95-02), § 456-10-340, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-340, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-345 Amendments to notice of appeal. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-345, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-355 Parties in exemption appeals. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-355, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-360 Conversion of hearing. [Statutory Authority: RCW 82.03.170. 98-22-040, § 456-10-360, filed 10/29/98, effective 11/29/98; 95-05-032 (Order 95-02), § 456-10-360, filed 2/8/95, effective 3/11/95; 94-07-043, § 456-10-360, filed 3/10/94, effective 4/10/94; 91-07-039 (Order 91-02), § 456-10-360, filed 3/15/91, effective 4/15/91; 89-10-057 (Order 89-03), § 456-10-360, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-420 Method of service. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-420, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-430 Service of papers—When complete. [Statutory Authority: RCW 82.03.170. 98-22-040, § 456-10-430, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-430, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-430, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-440 Proof of service—Certificate. [Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-440, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-440, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-525 Briefs. [Statutory Authority: RCW 82.03.170. 95-05-032 (Order 95-02), § 456-10-525, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-525, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-535 Hearing—Standard and scope of review. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-535, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-570 Motions—Application—Requirements. [Statutory Authority: RCW 82.03.170. 98-22-040, § 456-10-570, filed 10/29/98, effective 11/29/98; 89-10-057 (Order 89-03), § 456-10-570, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-720 Proposed findings and conclusions—Submission. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-720, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-735 Reply to exceptions. [Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-735, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-735, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-740 Finality of proposed decision. [Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-740, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-740, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-745 Final decision following proposed decision. [Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-745, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-10-750 Final decision—Precedential decisions. [Statutory Authority: RCW 82.03.170. 02-14-034, § 456-10-750, filed 6/25/02, effective 7/26/02; 89-10-057 (Order 89-03), § 456-10-750, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

**WAC 456-10-001 Purpose and application of chapter.** (1) This chapter explains how informal hearings are conducted before the board of tax appeals (board). Although informal hearings are available to all parties, the informal process is helpful for persons who are not represented by counsel. In the informal process a taxpayer does not need to possess legal expertise in order to pursue an appeal. These rules of practice and procedure will be liberally construed to secure the just, speedy, and economical determination of every action.

(2) Where procedures are not covered by this chapter, the board may, upon its own motion or upon written application by any party, refer to and apply any rule provided for in chapter 456-09 - Formal hearings—Practice and procedure, chapter 10-08 Washington Administrative Code (WAC) - Model rules of procedure, or the superior court civil rules. This chapter augments but does not supplant the provisions of chapter 82.03 RCW.

(3) The superior court civil rules, rules of professional conduct, the Washington Administrative Code (WAC), and the Revised Code of Washington (RCW) referred to herein are available in public libraries and on-line at various web sites.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-001, filed 6/21/05, effective 8/1/05.]

**WAC 456-10-010 Distinction between formal and informal hearing and converting an appeal.** (1) A party making an appeal may elect in writing, with its notice of appeal, either a formal or informal hearing. Informal hearings are conducted pursuant to the rules of practice and procedure set forth in this chapter. Formal hearings are conducted pur-



suant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of chapter 456-09 WAC. Failure to elect in writing a formal or informal hearing at the time of submitting the notice of appeal shall result in the proceeding being conducted as informal.

(a) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted thereto.

(b) Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

(c) Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

(2) The appeal may be converted from an informal to a formal proceeding as provided below.

(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.

(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-010, filed 6/21/05, effective 8/1/05; 94-07-043, § 456-10-010, filed 3/10/94, effective 4/10/94; 89-10-057 (Order 89-03), § 456-10-010, filed 5/2/89.]

**WAC 456-10-110 Definitions.** As used in this chapter, the following terms shall have the following meaning:

(1) "Board" means the board of tax appeals as described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers or agents of the board of tax appeals.

(2) "Presiding officer" or "hearing officer" shall mean any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer shall have authority as provided by WAC 10-08-200 and chapter 34.05 RCW.

(3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.

(4) "Respondent" means a person, natural or otherwise, who is named as a responding party in any appeal before the board of tax appeals.

(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and chapter 456-09 WAC.

(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.

(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.

(8) "Party" means any person who in a proceeding before the board is an appellant or respondent.

(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.

(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-110, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-110, filed 5/2/89.]

**WAC 456-10-120 Alternative procedures.** The board may, from time to time, offer expedited or abbreviated procedures for certain informal hearings in order to resolve appeals in an economic and efficient manner.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-120, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-120, filed 5/2/89.]

**WAC 456-10-140 Organization and office.** The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.

The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915. The phone number of the board office is 360-753-5446; its fax number is 360-586-9020; its electronic mail address is [bta@bta.state.wa.us](mailto:bta@bta.state.wa.us). Information about the board is available at its web site at <http://bta.state.wa.us>.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-140, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-140, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-140, filed 5/2/89.]

**WAC 456-10-150 Quorum.** Two members of the board shall constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures and may act although one position on the board may be

vacant. One member or designated hearing officer may hold hearings and take testimony. The findings of such member or hearing officer shall become final in accordance with WAC 456-10-725 or 456-10-730.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-150, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-150, filed 5/2/89.]

**WAC 456-10-160 Meetings of the board.** Regular public meetings of the board will be held at its principal office or such other place as the board designates at 9:30 a.m. on the second Friday of each month.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-160, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-160, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-160, filed 5/2/89.]

**WAC 456-10-210 Appearance and practice before the board.** Practice before the board in informal proceedings shall be limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;
- (3) Public officials in their official capacity;
- (4) Certified public accountants licensed in the state of Washington;
- (5) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;
- (6) Partners, joint venturers, or trustees representing their respective partnerships, joint venturers, or trusts; and
- (7) Other persons designated by a taxpayer with approval of the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-210, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-210, filed 5/2/89.]

**WAC 456-10-215 Notice of appearance by representatives.** Persons who represent parties in their appeal before the board must submit to the board and to the other parties a notice of appearance. The notice must include the name of the parties, the docket number if known, the representative's name, address, phone number, fax number, and electronic mail address.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-215, filed 6/21/05, effective 8/1/05.]

**WAC 456-10-220 Rules of professional conduct.** All persons appearing in proceedings before the board, whether on their own behalf or in a representative capacity, shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of Washington.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-220, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-220, filed 5/2/89.]

**WAC 456-10-300 Commencing the appeal.** (1) Persons wishing to make an appeal must submit to the board an original notice of appeal and a copy of the order or determination

that is being appealed. The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.

(2) The board will acknowledge to the appellant in writing receipt of a notice of appeal.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-300, filed 6/21/05, effective 8/1/05.]

**WAC 456-10-310 Contents of notice of appeal.** (1) For informal appeals, an appellant may submit a notice of appeal using forms provided by the board.

(2) In the alternative, an appellant may submit a notice of appeal that substantially contains the following:

- (a) Appellant's name, mailing address, telephone number, and that of the representative, if any.
- (b) Name of the respondent together with respondent's mailing address.

When the respondent is a government agency or agencies, the board may add respondents in order to ensure that all necessary persons are a party to the appeal.

(c) The date of the order or determination from which the appeal is taken, together with a copy of the order, decision, or application appealed from.

(d) The nature of the tax.

(i) In excise tax cases, the amount of the tax in controversy and the period covered thereby;

(ii) In property tax cases, the parcel number of the property under appeal, the year for which the valuation has been determined, the full value as determined by the local board of equalization, and a declaration of true and fair value as alleged by the appellant; and

(iii) In property tax exemption cases, the parcel number of the property under appeal, the year(s) for which the exemption is at issue, the basis under which exempt status should be granted or denied, and the use of the property.

(e) Specification of the issue to be decided by the board.

(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.

(g) The relief sought.

(h) The signature of the appellant or the appellant's representative.

(3) The board may, upon motion of a party or upon its own motion, require a more complete statement of the claim or defense or any matter stated in any notice of appeal.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-310, filed 6/21/05, effective 8/1/05; 98-22-040, § 456-10-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-310, filed 5/2/89.]

**WAC 456-10-315 Deadlines for submitting the notice of appeal.** (1) The jurisdiction of the board to hear an appeal is limited to those appeals submitted within the deadlines stated in this section. Any appeal to the board shall be submitted within the time required by the statute governing the respective agency or proceeding involved. All time periods set forth below are expressed in calendar days.

(a) Appeals taken pursuant to RCW 82.03.190, thirty days from the mailing of the determination.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130, thirty days from the mailing of the decision.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, thirty days from the mailing of the determination.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapters 84.12 and 84.16 RCW, thirty days from the mailing of the order.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, fifteen days after the mailing of the certification.

(f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, thirty days from the mailing of the notification.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, thirty days from the mailing of the ordinance.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, thirty days after the publication of the rate.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the sixtieth day after the date of final adoption.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, thirty days from the mailing of the determination.

(2) If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday, the submission shall be considered timely if performed on the next business day.

(3) Any party may, by motion, challenge the jurisdiction of the board in any appeal. The board may, upon its own motion, raise such jurisdictional issues.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-315, filed 5/2/89.]

**WAC 456-10-325 Date and manner of submitting the notice of appeal.** (1) The date of submitting a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is hand delivered. The board's date stamp placed thereon shall be evidence of the date of receipt. If the notice of appeal is mailed, the postmark will control and shall be evidence of the date of submission.

(2) All documents may be submitted to the board via fax or electronic mail transmission. However, submission will not be deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-10-300 unless the following procedures are strictly observed:

(a) Documents received by fax or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax or computer shall be evidence of the date and time of receipt of transmission.

(b) The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.

(c) All fax or electronic transmissions are sent at the risk of the sender.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-325, filed 6/21/05, effective 8/1/05; 98-22-040, § 456-10-325, filed 10/29/98, effective 11/29/98; 95-05-032 (Order 95-02), § 456-10-325, filed 2/8/95, effective 3/11/95; 94-07-043, § 456-10-325, filed 3/10/94, effective 4/10/94. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-325, filed 5/2/89.]

**WAC 456-10-330 Amendments to notice of appeal.** A notice of appeal may be amended as a matter of right within thirty days from the date the notice of appeal was received by the board. Thereafter, a party may amend the notice of appeal upon agreement in writing by the other party or when granted by the board. Motions to amend the notice of appeal shall be freely granted and may be denied only upon a showing by the adverse party of unreasonable and unavoidable hardship. Motions to amend must comply with WAC 456-10-510 and 456-10-410.

Amendments to the notice of appeal shall not extend any applicable jurisdictional deadline for appeal to the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-330, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-330, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-330, filed 5/2/89.]

**WAC 456-10-335 Response.** The respondent may submit a response to the notice of appeal with the board. The response, if any, must be submitted to the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-10-410.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-335, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-335, filed 5/2/89.]

**WAC 456-10-410 Service of papers on parties and proof of service.** (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(a) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial delivery company.

(b) Service by mail shall be regarded as completed upon deposit in the United States mail, as evidenced by the postmark, properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax

machine of confirmation of transmission and deposit on the same day in the United States mail. Service by commercial delivery shall be regarded as completed upon delivery to the delivery company, properly addressed with charges prepaid.

(2) Proof of service. Where proof of service is required by statute or rule, receipt of the papers by the board, together with one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-410, filed 6/21/05, effective 8/1/05; 98-22-040, § 456-10-410, filed 10/29/98, effective 11/29/98; 89-10-057 (Order 89-03), § 456-10-410, filed 5/2/89.]

**WAC 456-10-500 Prehearing conference.** The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences. Such prehearing conference will be conducted in accordance with the provisions of WAC 456-09-540.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-500, filed 6/21/05, effective 8/1/05.]

**WAC 456-10-501 Limitation on discovery.** (1) Insofar as applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include, but shall not be limited to, those rules pertaining to discovery of evidence by parties to civil actions.

(2) The board may limit discovery upon motion by any party.

(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules. The board may condition use of discovery on a showing of necessity and unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-501, filed 6/21/05, effective 8/1/05.]

**WAC 456-10-503 Summary judgment.** A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-10-510.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-503, filed 6/21/05, effective 8/1/05.]

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**WAC 456-10-505 Time in which evidence, briefs, and replies must be submitted.** In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board within the times stated below.

(1) Documentary evidence which is to be introduced at hearing shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 at least ten business days prior to hearing. Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-10-555.

(2) Briefs or other supporting statements, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 at least fifteen calendar days prior to hearing.

(3) Reply briefs or other supporting statements, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 at least ten calendar days prior to hearing.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-505, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-505, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-505, filed 5/2/89.]

**WAC 456-10-507 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before the board may by motion request status as an amicus in the case. The motion must comply with WAC 456-10-510 and 456-10-510.

(2) The motion requesting amicus status must include a statement of the following:

(a) Applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) Applicant's familiarity with the issues involved in the proceeding before the board and with the scope of the arguments presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues.

(3) The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus curiae from any person deemed to be substantially affected by a proceeding before the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-507, filed 6/21/05, effective 8/1/05.]

**WAC 456-10-510 Motions.** (1) Any application for an order or ruling or a request for relief from any provision of this chapter is a motion. Every motion, unless made during hearing, shall be in writing and shall include the following:

(a) A statement of the relief or order sought;

(b) The reason for the relief or order;

(c) A statement that the moving party has made a good faith effort to confer with the other party to resolve the subject matter of the motion;

(d) The amount of time needed for argument; and

(e) Shall include proof of service pursuant to WAC 456-10-410.

(2) All motions shall contain the docket number assigned to the appeal by the board and be signed by the party or the representative.

(3) At the discretion of the board, the hearing on motion may be by teleconference or in person.

(4) A response to the motion shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 within ten business days following the date of service of the motion.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-510, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-510, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-510, filed 5/2/89.]

**WAC 456-10-515 Postponement, continuance, and extensions of time.** (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date.

(3) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-10-510 and 456-10-410. The board shall promptly schedule a conference to hear argument and to rule on the request. Requests for continuance will not be granted absent a showing of good cause.

(4) This section shall not extend any applicable time for appeal to this board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-515, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-515, filed 5/2/89.]

**WAC 456-10-530 Notice of hearing.** (1) Notice of a hearing shall be mailed to all parties not less than twenty calendar days before the hearing date. The twenty-day notice provision may be waived by agreement of all parties.

(2) Contents. The notice shall contain:

(a) The names and mailing addresses of the parties and their representatives, if any;

(b) The docket number and name of the proceeding;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, date, and general nature of the proceeding (e.g., excise, property, etc.);

(e) A statement that the hearing is held pursuant to this chapter and chapter 82.03 RCW;

(f) A statement that, if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice shall also state that persons with disabilities may request reasonable accommodations to allow

their participation in the hearing. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired; or to describe the reasonable accommodations requested.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-530, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-530, filed 2/8/95, effective 3/11/95; 89-10-057 (Order 89-03), § 456-10-530, filed 5/2/89.]

**WAC 456-10-540 Hearing procedure.** Unless otherwise ordered by the board, hearings will be conducted in accordance with the following format:

(1) Administering of oath;

(2) Appellant's opening statement;

(3) Respondent's opening statement;

(4) Appellant's case in chief:

(a) Direct examination of witness;

(b) Cross-examination by respondent;

(c) Redirect examination by appellant;

(d) Recross examination;

(e) The above procedure is followed for each witness.

(5) Respondent's case in chief:

(a) Direct examination of witness;

(b) Cross-examination by appellant;

(c) Redirect examination by respondent;

(d) Recross examination;

(e) The above procedure is followed for each witness.

(6) Appellant's closing argument;

(7) Respondent's closing argument;

(8) Appellant's closing rebuttal;

(9) The board may pose questions to the parties, their representatives, and any witness at any time during the hearing.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-540, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-540, filed 5/2/89.]

**WAC 456-10-545 Testimony under oath.** (1) All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the board, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-545, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-545, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-545, filed 5/2/89.]

**WAC 456-10-547 Recording devices.** (1) All hearings shall be recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary

to prevent disruption of the hearing, or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-547, filed 6/21/05, effective 8/1/05; 91-07-039 (Order 91-02), § 456-10-547, filed 3/15/91, effective 4/15/91.]

**WAC 456-10-550 Failure to attend and hearing on the record.** (1) When a party to these proceedings has, after notice, failed to attend a hearing and has not notified the board and the opposing party of the intention to not attend, a motion for default or dismissal may be sought by any party to the proceedings, or raised by the board upon its own motion. Any such order shall include a statement of the grounds for the order and shall be served upon all parties to the proceeding.

Within ten business days after service of the default order or dismissal under subsection (1) of this section, the party against whom the order was entered may submit to the board together with proof of service pursuant to WAC 458-10-410 [456-10-410] a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an entry of dismissal, default, or final order.

(2) Upon stipulation by both parties, an appeal may be submitted to the board on the record and attendance of a party may be excused. However, the board in its discretion may require attendance for argument.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-550, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-550, filed 5/2/89.]

**WAC 456-10-555 Dismissal, stipulations, and withdrawal of actions.** Any action may be dismissed by the board for any of the following reasons.

(1) When all parties so stipulate.

Stipulations on the value of property shall contain the parcel number, assessment year, the agreed upon value of the subject property, and a brief statement supporting the agreed upon value.

(2) As a matter of right when the appellant requests orally or in writing to withdraw the appeal prior to the scheduled hearing.

(3) Upon motion of the appellant at the hearing prior to the presentation of the respondent's case.

(4) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

(5) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-555, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-555, filed 5/2/89.]

**WAC 456-10-560 Rules of evidence and admissibility criteria.** (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the board, the offered evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The board may exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The board

may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) Documentary evidence may be submitted in the form of copies or excerpts.

(4) If not inconsistent with subsection (1) of this section, the board may refer to, but shall not be bound by, the Washington rules of evidence.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-560, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-560, filed 5/2/89.]

**WAC 456-10-565 Official notice.** (1) The board may take official notice of the following:

(a) Any judicially cognizable facts;

(b) Any matter of public record;

(c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) If any decision is stated to rest in whole or in part upon official notice of a fact to which the parties have not had a prior opportunity to controvert, any party may controvert such fact by exception pursuant to WAC 456-10-730 if such notice is taken in a proposed decision or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-10-755. Such controversy shall concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-565, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-565, filed 5/2/89.]

**WAC 456-10-710 Assistance to board.** The board may obtain assistance concerning the appeal of any case within the scope of RCW 82.03.130 (1)(b) (appeals from a county board of equalization) from the staff of the department of revenue as provided by RCW 82.03.150. The board will notify the parties of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue. Parties may recommend an alternative to the board to achieve the same objectives without contacting the department of revenue. If the department of revenue supplies the requested assistance, the parties will be apprised of any information provided by the department of revenue and will be given an opportunity to respond.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-710, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-710, filed 5/2/89.]

**WAC 456-10-725 Proposed decision.** (1) A proposed decision shall be prepared when:

(a) An appeal has been heard by only one member of the board;

- (b) An appeal has been heard by only two members of the board and the two members cannot agree on a conclusion;
- (c) An appeal has been heard by a hearing officer; or
- (d) The board shall otherwise elect to do so.

(2) If an exception as provided in WAC 456-10-730 is not submitted to the board within twenty calendar days of the date of mailing of the proposed decision, the proposed decision shall be deemed the final decision of the board unless the decision specifies otherwise.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-725, filed 6/21/05, effective 8/1/05; 89-10-057 (Order 89-03), § 456-10-725, filed 5/2/89.]

**WAC 456-10-730 Exceptions to proposed decision, replies, and disposition.** (1) Any party may make, by mail or otherwise, a written exception with the board within twenty calendar days from the date of mailing of the proposed decision or, upon timely application, within such further time as the board may allow. The statement of exceptions shall be served on all other parties pursuant to WAC 456-10-410.

(2) Exceptions shall contain the specific factual and legal grounds upon which the exception is based. No new evidence may be introduced in the written exception; nor may the party or parties raise an argument in the exception that was not raised at the hearing. The party or parties making the exception shall be deemed to have waived all objections or irregularities not specifically set forth.

(3) Any party may make a reply to a written exception. The reply, together with proof of service pursuant to WAC 456-10-410, shall be submitted to the board within ten business days of the date of the letter acknowledging receipt by the board of the written exception.

(4) The disposition may be in the form of a written order denying the exception and adopting the proposed decision as the final decision, granting the exception and issuing a final decision, or granting the exception and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which exceptions were taken, within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-730, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-730, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-730, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-730, filed 5/2/89.]

**WAC 456-10-755 Petition for reconsideration of a final decision.** (1) A petition for reconsideration is not available where a proposed decision was first issued.

(2) Where a final decision has been issued and no proposed decision was first issued, any party may submit a petition for reconsideration with the board together with proof of service pursuant to WAC 456-10-410 within ten business days from the mailing of the final decision. The board may require or any party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response together with proof of service pursuant to WAC 456-10-410.

(3) The submitting of a petition for reconsideration shall suspend the final decision until action by the board. The board may deny the petition, modify its decision, or reopen the hearing.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-10-755, filed 6/21/05, effective 8/1/05; 95-05-032 (Order 95-02), § 456-10-755, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. 90-11-106, § 456-10-755, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-057 (Order 89-03), § 456-10-755, filed 5/2/89.]

## Title 458 WAC REVENUE, DEPARTMENT OF

### Chapters 458-12

**Property tax division—Rules for assessors.**

### 458-16 458-18

**Property tax—Exemptions.**

**Property tax—Abatements, credits, deferments and refunds.**

### 458-19 458-20 458-29A

**Property tax levies, rates, and limits.**

**Excise tax rules.**

**Leasehold excise tax.**

### 458-30 458-40 458-61A

**Open Space Taxation Act rules.**

**Taxation of forest land and timber.**

**Real estate excise tax.**

### DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

#### Chapter 458-61 REAL ESTATE EXCISE TAX

458-61-015

General information. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-015, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45-150. Later promulgation, see chapter 458-61A WAC.

458-61-025

Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-025, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45-150. Later promulgation, see chapter 458-61A WAC.

458-61-030

Definitions. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-030, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-030, filed 5/27/87; 87-03-036 (Order PT 87-1), § 458-61-030, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-030, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-030, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-030, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-030, filed 7/21/82. Formerly chapter 458-60 WAC.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.

458-61-050

Payment of tax—County treasurer as agent for the state. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-050, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-050, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-050, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-050, filed 7/21/82.] Repealed by 05-23-093, filed

- 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-060 Disposition of proceeds. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-060, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-060, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-060, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-070 Affidavit batch transmittal. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-070, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-070, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-080 Affidavit requirements. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-080, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-080, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-080, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-080, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-080, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-090 Date of sale—Interest and penalty. [Statutory Authority: RCW 82.45.150 and 82.32.300. 99-14-053, § 458-61-090, filed 6/30/99, effective 7/31/99. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-090, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-090, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-100 Refunds of tax paid. [Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060(2). 03-18-023, § 458-61-100, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-100, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-100, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-100, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-100, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-100, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-120 Evasion penalty. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-120, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-120, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-130 Department audit responsibility. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-130, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-130, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-150 Supplemental statements. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-150, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-150, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-150, filed 8/6/86.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-200 Apartments. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-200, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-200, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-210 Assignments—Purchasers. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-210, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-210, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-210, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-210, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-210, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-210, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-220 Assignments—Sellers. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-220, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-220, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-220, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-225 Assumption of debt. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-225, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-230 Bankruptcy. [Statutory Authority: RCW 82.32.300, 84.45.150, 11 U.S.C. sec. 1146(c) and 12 U.S.C. sec. 1231(c). 00-09-002, § 458-61-230, filed 4/5/00, effective 5/6/00. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-230, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 90-01-003, § 458-61-230, filed 12/7/89, effective 1/7/90; 86-16-080 (Order PT 86-3), § 458-61-230, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-230, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-230, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-235 Boundary line adjustments. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-235, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-250 Cemetery lots or graves. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-250, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-250, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-255 Clearing title. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-255, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-290 Contract. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-290, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-290, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-290, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-300 Contractor. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-300, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-300, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority:



458-61-330	RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC. Foreclosure—Deeds in lieu of foreclosure. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-330, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-330, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-412	Exemption—Inheritances. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-412, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-335	Easements, development rights, water rights and air rights. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-335, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-335, filed 1/16/87.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-420	Government transfers. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-420, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-420, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-340	Community property—Dissolution of marriage/divorce. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-340, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-340, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-425	Growing crops. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-425, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-425, filed 8/6/86.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-370	Exchanges—Trades. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-370, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-370, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-430	Sale of improvements to land. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-430, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-430, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-374	Exemption—Transfers made "subject to." [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-374, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-450	Indian (American), transfers to or from. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-450, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-375	Exemption—Mere change in identity or form—Family corporations and partnerships. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-375, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-470	Irrigation equipment. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-470, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-470, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-376	Exemption—Transfers where gain is not recognized under the Internal Revenue Code. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-376, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-480	IRS "tax deferred" exchange. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-480, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-480, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-480, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-400	Creation, assignment and release of security interests. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-400, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-400, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-400, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-510	Leases. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-510, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-510, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-510, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-410	Gifts. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-410, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-410, filed 8/6/86; 83-02-022 (Order PT 82-10), § 458-61-410, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-410, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-520	Mineral rights and mining claims. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-520, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-520, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
458-61-411	Exemption—Irrevocable trusts. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-411, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.	458-61-540	Mobile and floating home sales. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-540, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-540, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-540, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
		458-61-545	Mortgage insurers. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-545, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW

- 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-545, filed 8/6/86.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-550 Nominee. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-550, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-550, filed 8/6/86; 83-02-022 (Order PT 82-10), § 458-61-550, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-550, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-553 Nonprofit organizations. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-553, filed 2/1/94, effective 3/4/94.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-555 Option to purchase. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-555, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-555, filed 5/27/87; 86-16-080 (Order PT 86-3), § 458-61-555, filed 8/6/86.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-590 Rescission of sale. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-590, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-590, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-590, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-590, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-600 Relocation service. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-600, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-600, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-610 Rerecord. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-610, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-610, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-640 Sheriff's sale. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-640, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-640, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-650 Tenants in common and joint tenants. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-650, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-650, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-650, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-660 Timber, standing. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-660, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-660, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.
- 458-61-670 Trade-in credit. [Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-670, filed

2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-670, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-670, filed 7/21/82.] Repealed by 05-23-093, filed 11/16/05, effective 12/17/05. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. Later promulgation, see chapter 458-61A WAC.

## Chapter 458-12 WAC

### PROPERTY TAX DIVISION—RULES FOR ASSESSORS

#### WAC

458-12-342

New construction—Assessment.

#### WAC 458-12-342 New construction—Assessment.

(1) New construction covered under the provisions of RCW 36.21.070 and 36.21.080, and defined in WAC 458-19-005 (2)(q), shall be assessed at its true and fair value as of July 31st each year regardless of its percentage of completion. In instances when new construction continues after July 31 of any year, the increase in value of the property due to the new construction that occurs between August 1 of that year through July 31 of the following year is added to the assessment roll as "new construction" in the following year. New construction as used in this section refers only to real property, as defined in RCW 84.04.090 and further defined in WAC 458-12-010, and also to improvements, as described in WAC 458-12-005(4), located on leased public land, for which a building permit was issued or should have been issued pursuant to chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits.

(2) The assessor is authorized to place new construction on the assessment rolls up to August 31st each year and shall notify the owner, or person responsible for payment of taxes, of the value of any new construction that has been assessed. The notice shall advise the owner, or person responsible for payment of taxes, that such owner or person has thirty days from the date of mailing of the notice, or up to sixty days when the county legislative authority has adopted a longer time period, whichever is later, to appeal the valuation to the county board of equalization as provided in WAC 458-14-056.

[Statutory Authority: RCW 84.08.010 and 84.41.090. 05-14-106, § 458-12-342, filed 6/30/05, effective 7/31/05; 93-08-049, § 458-12-342, filed 4/2/93, effective 5/3/93; 83-22-004 (Order PT 83-6), § 458-12-342, filed 10/20/83.]

## Chapter 458-16 WAC

### PROPERTY TAX—EXEMPTIONS

#### WAC

458-16-1000

Property belonging to federally recognized Indian tribes—Definitions—Exemption—Declaration process—Appeal rights.

**WAC 458-16-1000 Property belonging to federally recognized Indian tribes—Definitions—Exemption—Declaration process—Appeal rights.** (1) **Introduction.** This section implements the amendments to RCW 84.36.010 made by the 2004 legislature and published in the 2004 regular session laws as chapter 236. RCW 84.36.010 exempts "all property belonging exclusively to any federally recognized Indian tribe located in the state, if that property is used exclu-

sively for essential government services." This section explains the exemption, how the exemption may be obtained, how essential government services is defined, and how a tribe or an assessor may appeal an exemption determination.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(b) "Board" or "BTA" means the state board of tax appeals described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC.

(c) "Declaration" means the exemption declaration filed by an Indian tribe with the department to claim the property tax exemption authorized in RCW 84.36.010.

(d) "Department" means the department of revenue, property tax division.

(e) "Essential government services" means services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services. See subsections (4) and (5) below that outline more complete and detailed examples of "essential government services" for the purposes of this section.

(f) "Federally recognized Indian tribe," "Indian tribe," or "tribe" means any Indian nation, tribe, band, community, or other entity that is recognized as an "Indian tribe" by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe." See WAC 458-20-192 for more explicit information regarding these defined terms.

(g) "State" means the state of Washington.

(3) **Exemption.** To qualify for the exemption authorized by chapter 236, Laws of 2004, real and personal property located in the state must:

(a) Belong exclusively to a federally recognized Indian tribe; and

(b) Be used exclusively for essential government services.

Property may already be exempt under federal law. For example, real property owned by the federal government and held in trust for a federally recognized Indian tribe, or property held by a tribe in restricted fee status, is exempt from property tax.

(i) **What is the effective date of exemption?** The effective date of the exemption is June 10, 2004. The exemption first applies to taxes due in 2005.

(ii) **How may a tribe claim this exemption? - Exemption declaration required.**

(A) **Declaration form - how it may be obtained.** An Indian tribe claiming the exemption described in this section must submit an exemption declaration and supporting documentation regarding the ownership and use of the property to the department. The declaration must be on a form prescribed by the department and signed by an authorized agent of the tribe. This information will be used to determine whether the property qualifies for exemption. An exemption declaration may be obtained from the department or downloaded from the department's internet site under the "forms" heading for property tax at <http://dor.wa.gov/>.

(B) **Exemption declaration.** Declarations must be filed with the department to exempt property for taxes due the fol-

lowing year. A tribe may submit one exemption declaration for all real and personal property that it owns exclusively if the property is used exclusively for essential government services. If real property is owned in part and/or used in part by another individual or entity, a separate exemption declaration must be submitted for each parcel.

(C) **Other documentation a tribe may be required to submit with exemption declaration to determine eligibility.** In addition to the exemption declaration, a tribe may be asked to submit the following information regarding the real or personal property for which exemption is sought to determine the amount of and eligibility for the exemption:

(I) An accurate description of the real and personal property including the county tax parcel number(s), and a copy of the current deed(s);

(II) An accurate map identifying by dimension the use of all real property that shows buildings, building sites, parking areas, landscaping, floor plans of the buildings, and vacant areas. The map or floor plan will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the area;

(III) If the property is rented or loaned to another party, a copy of the rental agreement or other document explaining the terms of the lease or loan. This documentation must describe:

- What property is rented or loaned;
- The name of the party to whom the property is rented or loaned; and
- How the property is being used.

(D) **Department's review of exemption declaration and notice of exemption determination.** Upon receipt of the exemption declaration the department will review the declaration and all supporting documentation. The department may physically inspect the property in order to verify exempt use. Additional information may be requested about the ownership and use of the property, if the department needs this information to determine whether the property qualifies for exemption. An exemption declaration is not considered complete until the department receives all required information. The department shall then determine the taxable status of the property. The burden is upon the tribe to demonstrate exempt use and ownership. The department may deny the exemption declaration, in whole or in part, if it believes the property does not qualify for exemption. If the exemption declaration is denied for any portion of the property, the department must clearly state the reason(s) for denial in a written determination. A denial may be appealed, as explained in subsection (13) of this section.

(E) **When will the property be exempt from payment of taxes?** If an exemption declaration is approved, the property is exempt from property taxes due the year immediately following the year in which the declaration is submitted and for all subsequent years unless the property is sold or transferred or the tribe ceases to use the property exclusively for essential government services (see subsections (11) and (12) of this section).

(4) **Essential government services as defined in RCW 84.36.010.** For the purposes of this section, "essential government services" mean services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and

utility services. Property used for essential government services includes property:

(a) Used to provide access to water or land for the exercise by a tribe or its tribal members of their treaty rights;

(b) Used for the protection and stewardship of forest land, shoreline, watershed, or other environmentally sensitive areas;

(c) Used for the preservation of historically or culturally significant sites; and

(d) Used by a utility company providing services to residents of Indian country, as defined in WAC 458-20-192. The property of a utility company that provides services to an area extending outside of Indian country does not qualify for exemption.

**(5) Examples regarding essential government services.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide and are not to be used to determine eligibility for exemption. All examples assume exclusive ownership of property located in the state by a federally recognized tribe.

(a) A tribe uses property for a courthouse, police station, fire station, hospital, library, and public schoolhouse. Each of these uses is a use for essential government services.

(b) A tribe acquires off-reservation land along the headwaters of a stream flowing into the reservation. The land is maintained as a conservation zone, limiting pollution and protecting water quality. The property is used for essential government services.

(c) A tribe operates a fish hatchery as part of its fisheries program. The property is used for essential government services.

(d) A tribe operates a fish cannery and processing center. The property is used for a commercial activity and is not used for essential government services.

(e) A tribe maintains and operates a parking lot or garage that is adjacent to its tribal administration building and courthouse. The parking lot or garage is integrally related to the essential government services provided in close proximity to its location. The property is used for essential government services. However, if the parking lot or garage is also used for ineligible purposes (such as parking for business patrons), it is taxable.

(f) A tribe operates a sawmill and log yard used to process and store timber or logs removed from its forest lands. Both the sawmill and log yard are commercial activities. The property is not used for essential government services.

(g) A tribe's members are unable to reach an off-reservation portion of a river in order to exercise fishing rights without crossing private property. The tribe purchases a parcel in order to allow access and establishes a footpath to the river. The property is used for essential government services.

**(6) Property jointly owned by an Indian tribe and another individual or entity used exclusively for essential government services - eligibility for exemption.** The percentage of the property owned exclusively by a tribe and used exclusively for essential government services is eligible for exemption.

**(7) Property used for qualifying and nonqualifying purposes - mixed use of property - eligibility for exemption.** If property belongs exclusively to an Indian tribe and is

used for qualifying and nonqualifying purposes and if the two uses are physically separate on the real property, the department shall administratively segregate the portion of the property that is used exclusively for essential government services and exempt that portion of the property from property tax. The portion of the property that is used for nonqualifying uses is subject to taxation.

(a) An administrative segregation occurs when the department separates the exempt value from the taxable value. The assessor may create a new tax parcel number that exists solely for property tax purposes.

(b) Example: A tribal administrative office may be located in the same building as a convenience store run as a commercial enterprise. The portion of the building used for tribal administration offices is exempt and the portion of the building used as a convenience store is taxable.

(c) If the property is used at times for exempt or qualifying services and at other times for nonexempt purposes, the "exclusively used" standard is not met and the property is taxable.

**(8) Property owned by an Indian tribe that is leased - eligibility for exemption.** If property belonging exclusively to an Indian tribe is leased to an individual, a for-profit or nonprofit entity, a tribal member, or another governmental entity, the tenant's or lessee's activities will determine whether the property qualifies for exemption.

**(9) Undeveloped property within or contiguous to a reservation - eligibility for exemption.** Consolidation and reacquisition of undeveloped real property within or contiguous to a tribe's reservation resolves questions of jurisdiction and is an essential government service for a tribal government.

**(10) Property used for commercial or enterprise activities - ineligible for exemption.** Property used for commercial or enterprise activities does not qualify for exemption. For purposes of this section, a "commercial or enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The burden is upon the tribe to prove that the property is not used for commercial or enterprise activities. The collection of a fee, such as a fee for the use of the picnic area in a park, does not make an activity a commercial or enterprise activity. Property used for a commercial or enterprise activity will not qualify for the exemption when funds received from the activity are used to provide essential government services. For example, if a tribe owns exclusively property on which it operates a gas station and the profits from the gas station are used to pay for essential government services, the property does not qualify for the exemption.

**(11) Sale, transfer, or cessation of use of exempt property.** If a tribe sells or transfers property or ceases to use real property for an essential government service as required under RCW 84.36.010, the exemption will be canceled as of the date the property was sold or transferred or the exempt use of the property ceased. Real property that no longer retains its exempt status will be assessed a pro rata portion of the taxes allocable to the property for the remaining portion of the tax year after the date the property lost its exempt status. If only a portion of the property has lost its exempt status, only that portion of the property is subject to tax. See RCW 84.40.350 through 84.40.390 for a more complete explanation.

tion of what occurs when the status of real property changes from exempt to taxable.

(a) **Duty to notify department.** A tribe must notify the department of any change in the ownership or use of the property that might affect its exempt status within a reasonable amount of time. If any portion of the exempt property is loaned or rented, the tribe is also required to report this change to the department because the loan or rental may affect the taxable status of the property. Any other person who knows or has information regarding a change in ownership or use of exempt property may notify the department of any such change. Upon receipt of change notice, the department will determine whether the property retains its exempt status.

(b) **Notice to tribe.** The department must notify the tribal owner of the exempt property if the exemption is being removed, in whole or in part. The tribe may appeal the removal of the exemption to the BTA. At the same time, the tribe may provide additional information to the department for reconsideration of the determination.

(12) **Can the exemption be claimed for prior years - refunds?** A tribe may submit an exemption declaration for previous years, up to a maximum of three years from the date taxes were paid on the property, if the taxpayer provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years. If the exemption is granted, the tribe must submit a refund claim to the county treasurer. RCW 84.69.020(2) and 84.69.030. However, no exemption can be claimed for any time period prior to 2004, the first assessment year affected by RCW 84.36.010 as amended by chapter 236.

(13) **Administrative appeal rights - board of tax appeals.** The tribe or assessor may appeal an exemption determination made by the department to the BTA under RCW 82.03.130 (1)(c). A notice of appeal can be obtained from the department or the BTA, or downloaded from the BTA internet site, <http://bta.state.wa.us/>.

[Statutory Authority: RCW 84.36.010 and 84.36.865. 05-18-010, § 458-16-1000, filed 8/25/05, effective 9/25/05.]

## Chapter 458-18 WAC

### PROPERTY TAX—ABATEMENTS, CREDITS, DEFERRALS AND REFUNDS

#### WAC

458-18-220 Refunds—Rate of interest.

**WAC 458-18-220 Refunds—Rate of interest.** The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%

[Statutory Authority: RCW 84.69.100. 05-22-096, § 458-18-220, filed 11/1/05, effective 12/2/05; 04-24-101, § 458-18-220, filed 12/1/04, effective 1/1/05; 03-24-014, § 458-18-220, filed 11/20/03, effective 12/21/03; 02-23-081, § 458-18-220, filed 11/19/02, effective 12/20/02; 02-03-039, § 458-18-220, filed 1/8/02, effective 2/8/02; 00-24-106, § 458-18-220, filed 12/6/00, effective 12/31/00; 99-24-033, § 458-18-220, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.69.100. 99-01-066, § 458-18-220, filed 12/14/98, effective 1/1/99; 98-01-177, § 458-18-220, filed 12/23/97, effective 1/1/98; 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

## Chapter 458-19 WAC

### PROPERTY TAX LEVIES, RATES, AND LIMITS

#### WAC

458-19-005	Definitions.
458-19-070	Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded.
458-19-075	Constitutional one percent limit calculation.

**WAC 458-19-005 Definitions.** (1) **Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) "Annexation" means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of

a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) "Assessed value" means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) "Certified property tax levy rate" means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(d) "Consolidated levy rate" means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection exclusive of rates set for the state levy, port and public utility districts, financing affordable housing for very low-income households under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, criminal justice purposes under RCW 84.52.135, emergency medical care or emergency medical services under RCW 84.52.069, county ferry districts under RCW 36.54.130, the portion of the fire protection levies protected under RCW 84.52.125, and the portion of metropolitan park district levies protected under RCW 84.52.120; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts.

(e) "Consolidation" means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(f) "Constitutional one percent limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent (\$10 per \$1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

(g) "Department" means the department of revenue of the state of Washington.

(h) "Excess property tax levy" or "excess levy" means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed the levy limit with voter approval.

(i) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(j) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce in September of the year before the taxes are payable; see RCW 84.55.005.

(k) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(l) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(m) "Levy limit" means the statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing district in any year since 1985, plus an additional dollar amount calculated by multiplying the increase during the current year of the assessed value in the taxing district due to new construction, improvements to property, and the increase in the value of state assessed property by the levy rate of that district for the preceding year, or the last year the taxing district levied taxes.

(i) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

(ii) The levy limit for the state is the limit factor multiplied by the highest amount of regular property taxes lawfully levied in the three most recent years, plus an additional dollar amount attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property.

(n) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(o) "Limit factor" means:

(i) For taxing districts with a population of less than ten thousand in the calendar year immediately prior to the assessment, one hundred one percent;

(ii) For taxing districts having made a finding of substantial need in accordance with RCW 84.55.0101, the lesser of the substantial need factor or one hundred one percent; or

(iii) For all other taxing districts, including the state, the lesser of one hundred one percent or one hundred percent plus inflation.

(p) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(q) "Regular property tax levy" or "regular levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(r) "Regular property taxes" means those taxes resulting from regular property tax levies.

(s) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(t) "Statutory aggregate dollar rate limit" or "statutory aggregate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. See WAC 458-19-070 for the current limit.

(u) "Substantial need limit factor" means a limit factor approved by a taxing district's legislative authority that exceeds one hundred percent plus inflation. This limit cannot exceed one hundred one percent.

(v) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular class of taxing district.

(w) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to forty percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total votes cast in the taxing district in the last preceding general election.

(x) "Tax code area" means a geographical area made up of a unique mix of one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(y) "Taxing district" means the state and any county, city, town, port district, school district, road district, metropolitan park district, water-sewer district, or other municipal corporation, now or hereafter existing, having the power or legal authority to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, upon property in proportion to the benefits accruing thereto.

[Statutory Authority: RCW 84.52.010, 84.52.043, and 84.52.0502. 06-02-008, § 458-19-005, filed 12/22/05, effective 1/22/06. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-005, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-005, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded. (1) Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This rule describes the prorationing process used to establish a consolidated levy

rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

**(2) Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (e) Levies for acquiring conservation futures under RCW 84.34.230;
- (f) Levies for criminal justice purposes under RCW 84.52.135;
- (g) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (h) Levies by or for county ferry districts under RCW 36.54.130;
- (i) The portion of fire protection district levies protected under RCW 84.52.125; and
- (j) The portion of metropolitan park district levies protected under RCW 84.52.120.

**(3) Prorationing under consolidated levy rate limitation.** RCW 84.52.010 sets forth the prorationing order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorationing is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy

rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125 fire protection districts may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorationing.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.-125 come into play; that is, a fire protection district may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorationing under RCW 84.52.043(2), if the total levies would otherwise be prorated under RCW 84.52.-010 (2)(e) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts under RCW 86.15.160.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, cultural arts, stadium, and convention districts under RCW 67.38.130, park and recreation districts under RCW 36.69.145, and park and recreation service areas under RCW 36.68.525 on a pro rata basis until the remaining levy capacity equals zero.

#### (4) Example.

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County Road	1.8000	NONE	1.8000	1.850
	2.2500	NONE	2.2500	
Library Fire Hospital	.5000	NONE	.5000	.350
	.5000	NONE	.5000	
	.5000	NONE	.5000	
Fire	.2000	NONE	.2000	.150



DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

1. Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

2. Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

3. Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

4. The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. And finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital respectively are multiplied by the proration factor.

[Statutory Authority: RCW 84.52.010, 84.52.043, and 84.52.0502. 06-02-008, § 458-19-070, filed 12/22/05, effective 1/22/06. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-070, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-070, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-075 Constitutional one percent limit calculation.** (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This rule explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** After prorationing under RCW 84.52.043 (the five dollar and ninety cent per thousand dollars of assessed value limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The following regular levy rates are used to calculate the combined levy rate of any particular tax code area:

(i) The local rate for the state levy;

(ii) The levy rate for financing affordable housing for very low-income households under RCW 84.52.105;

(iii) The levy rate for acquiring conservation futures under RCW 84.34.230;

(iv) The levy rate for criminal justice purposes under RCW 84.52.135;

(v) The levy rate for emergency medical care or emergency medical services under RCW 84.52.069;

(vi) The levy rate by or for county ferry districts under RCW 36.54.130;

(vii) The levy rate for the portion of fire protection district levies protected under RCW 84.52.125; and

(viii) The levy rate for the portion of metropolitan park district levies protected under RCW 84.52.120.

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Prorationing - constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded. The order contained in this statute begins with the taxing districts that are the first to have their levy rates either reduced or eliminated. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Levy rates are reduced or eliminated on a pro rata basis within each tier of taxing district levies until the combined levy rate no longer exceeds one percent of the true and fair value of property.

If the constitutional one percent limit is exceeded, the following levies are to be reduced or eliminated in the following order until the combined levy rate no longer exceeds the maximum effective levy rate:

(a) The levy rate for fire protection districts protected under RCW 84.52.125;

(b) The levy rate for criminal justice purposes imposed under RCW 84.52.135;

(c) The levy rate for county ferry districts under RCW 36.54.130;

(d) The twenty-five cents per thousand dollars of assessed value levy rate for metropolitan park districts protected under RCW 84.52.120;

(e) The levy rates for levies for financing affordable housing for very low-income households under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value are reduced on a pro rata basis or eliminated;

(f) The levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069;

(g) The levy rates for city transportation authorities under RCW 35.95A.100, cultural arts, stadium, and convention districts under RCW 67.38.130, park and recreation districts under RCW 36.69.145, and park and recreation service areas under RCW 36.68.525 are reduced on a pro rata basis or eliminated;

(h) The levy rate for flood control zone districts under RCW 86.15.160;

(i) The levy rates for all other junior taxing districts, except fire protection districts under RCW 52.16.140 and 52.16.160, regional fire protection service authorities under RCW 52.26.140, library districts under RCW 27.12.050 and 27.12.150, and the first fifty cents per thousand dollars of assessed value for metropolitan park districts under RCW 84.52.120 and for public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;

(j) The levy rate of fifty cents per thousand dollars of assessed value for metropolitan park districts created on or after January 1, 2002;

(k) The levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection authorities under RCW 52.26.140 (1)(b) and (c) are reduced on a pro rata basis or eliminated;

(l) The levy rates for fire protection districts under RCW 52.16.130, regional fire protection districts under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, and the levy rate for first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6) and for metropolitan park districts under RCW 35.61.210 created before January 1, 2002, are reduced on a pro rata basis or eliminated;

(m) The levy rates for the county, county road, and a city or town are reduced on a pro rata basis or eliminated; and

(n) The levy rate for the state for the support of common schools.

[Statutory Authority: RCW 84.52.010, 84.52.043, and 84.52.0502. 06-02-008, § 458-19-075, filed 12/22/05, effective 1/22/06. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-075, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-075, filed 3/14/94, effective 4/14/94.]

## Chapter 458-20 WAC EXCISE TAX RULES

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-20-191	Federal reservations. [Statutory Authority: RCW 82.32.300, 83-07-033 (Order ET 83-16), § 458-20-191, filed 3/15/83; Order ET 75-1, § 458-20-191, filed 5/2/75; Order ET 70-3, § 458-20-191 (Rule 191), filed 5/29/70, effective 7/1/70.] Repealed by 05-03-002, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 82.32.300, 82.01.060(1), and 34.05.230. Later promulgation, see WAC 458-20-190.
458-20-99999	Appendix—The Buck Act. Repealed by 05-03-002, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 82.32.300, 82.01.060(1), and 34.05.230.

### WAC 458-20-100 Appeals. (1) Introduction.

(a) This rule explains the procedures for administrative review of actions of the department or of its officers and employees in the assessment or collection of taxes, as provided in RCW 82.01.060(4), including, but not limited to:

- (i) An assessment of tax, interest, or penalties;
- (ii) The denial of a refund, credit, or deferral request;
- (iii) The issuance of a balance due notice or a notice of delinquent taxes, including a notice of collection action; and
- (iv) The issuance of an adverse ruling on future liability from the taxpayer information and education section.

(b) Persons seeking administrative review of a business license revocation, a cigarette license revocation or suspension, a log export enforcement action, or orders to county officials under Title 84 RCW should refer to the following rules:

(i) WAC 458-20-10001 for information on the revocation of a certificate of registration or the revocation or suspension of a cigarette license; or

(ii) WAC 458-20-10002 for information on log export enforcement actions and orders to county officials issued under RCW 84.08.120 and 84.41.120.

### (2) Preappeal supervisor's conference and preappeal rulings on future liability.

(a) **Supervisor's conferences.** Taxpayers are encouraged to request a supervisor's conference when they disagree with an action proposed by the department. Taxpayers should make their request for the conference with the division of the department that proposes to issue an assessment or take some other action in dispute. Supervisor's conferences provide an opportunity to resolve issues prior to the review provided in this rule.

(b) **Rulings.** Taxpayers may request an opinion on future reporting instructions and tax liability from the department's taxpayer information and education section of the taxpayer services division. The request must be in writing, contain all pertinent facts concerning the question presented, and may contain a statement of the taxpayer's views concerning the correct application of the law. The department will advise the taxpayer in writing of its opinion in a tax ruling. The tax ruling must state all pertinent facts upon which the opinion is based and, if the taxpayer's name has been disclosed, is binding upon both the taxpayer and the department under the facts stated. It will remain binding until the facts change, the applicable statute or rule changes, a published appellate court decision not subject to review changes a prior interpretation of law, the department publicly announces a change in the policy upon which this ruling is based, or the taxpayer is notified in writing that the ruling is no longer valid. Any change

in the ruling will have prospective application only. Rulings on future tax liability are subject to review as provided in this rule.

(3) **How are appeals started?** A taxpayer starts a review of a departmental action by filing a written petition. Petitions should be addressed to:

Appeals Division  
Washington State Department of Revenue  
P.O. Box 47460  
Olympia, Washington 98504-7460

A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the appeals division. Taxpayers may use the form petition or prepare one of their own. The taxpayer or its authorized representative must sign the petition, which must contain the following information:

(a) The taxpayer's name, address, registration/UBI number, telephone number, fax number, e-mail address, and contact person;

(b) If represented, the representative's name, address, telephone number, fax number, and e-mail address;

(c) Identifying information from the assessment notice, balance due notice, or other document being appealed;

(d) The amount of tax, interest, or penalties in controversy, and the time period at issue;

(e) The type of appeal requested (see subsection (6) of this section);

(f) Whether an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing is requested; and

(g) A brief explanation of each issue or area of dispute and an explanation why each issue or area of dispute should be decided in the taxpayer's favor. To the extent known or available, taxpayers should cite applicable rules, statutes, or supporting case law and provide copies of records that support the taxpayer's position.

If a petition does not provide the required information, the department will notify the taxpayer in writing that the petition is not accepted for review. The notice will provide a period of time for the taxpayer to cure the defects in the petition. If a taxpayer is represented, the taxpayer should also have on file with the department a confidential tax information authorization.

(4) **To be timely, when must a petition be filed or extensions requested?** A taxpayer must file a petition with the department within thirty days after the date the departmental action has occurred.

(a) The appeals division may grant an extension of time to file a petition if the taxpayer's request is made within the thirty-day filing period. Requests for extensions may be in writing or by telephone, and must be directed to the department's appeals division.

(b) A petition or request for extension is timely if it is postmarked or received within the thirty-day filing period.

(c) The appeals division may not grant an extension of time to file a petition for refund that would exceed the time limits in WAC 458-20-229 (Refunds). A request for a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. See WAC 458-20-229 for procedures on seeking a refund.

(d) The appeals division will notify taxpayers in writing when a petition is rejected as not timely.

### (5) **How are appeals scheduled, heard, and decided?**

The appeals division will acknowledge receipt of the petition and identify the administrative law judge (ALJ) assigned to the appeal. ALJs are attorneys trained in the interpretation of the Revenue Act and precedents established by prior rulings and court decisions. They are employed by the department to provide an informal, final review of agency actions.

(a) **Scheduling.** The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the taxpayer does not request a hearing, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The appeals division will notify the taxpayer by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other departmental employees may attend a hearing, and the ALJ will notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before an ALJ are conducted informally and in a nonadversarial, uncontested manner.

(c) **Hearing and posthearing submissions.** If a taxpayer asks to submit additional records or documents at a hearing, the taxpayer must explain why they were not submitted under the deadlines established in the scheduling letter. The ALJ has the discretion to allow late submissions by the taxpayer or the department and, if allowed, will provide the other party with additional time to respond. If additional document production or additional briefing is allowed by the ALJ, posthearing, such briefing or documents usually must be submitted within thirty days after the hearing, unless good cause is shown for additional time. ALJs have the discretion to allow additional time for further fact-finding, including scheduling an additional hearing, as necessary in a particular case.

(d) **Determinations.** Following the hearing, if any, and review of all submissions, the ALJ will issue a determination consistent with the applicable statutes, rules, case law, and department precedents. The appeals division will notify the taxpayer in writing of the decision. The determination of the ALJ is the final decision of the department and is binding upon the taxpayer unless a petition for reconsideration is timely filed by the taxpayer and accepted by the department.

(6) **Are all appeals the same?** No, in addition to regular appeals, called mainstream appeals, an appeal may also be assigned as a small claims or executive level appeal based on the amount at issue or the complexity of the issues. In addition, an appeal may be expedited under certain urgent circumstances.

(a) **Small claims appeals.** Except as set forth in (a)(i), (ii), or (iii) of this subsection, when the tax at issue in the appeal is twenty-five thousand dollars or less and the total amount of the tax plus penalties and interest at issue in the appeal is fifty thousand dollars or less, the appeal will be heard as a small claims appeal.

(i) The department may decline to hear an appeal as a small claims appeal if the department finds the appeal is not suitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry-wide application, or constitutional issues are generally not suitable for small claims resolution.

(ii) The appeals division will notify the taxpayer in writing when an appeal is to be heard as a small claims appeal. The taxpayer may request in writing that the matter not be heard as a small claims appeal. Such requests will be granted if received or postmarked within fifteen days following the date of the notice.

(iii) In the petition the taxpayer may affirmatively request that the petition not be heard as a small claims appeal. Such requests will be granted.

Taxpayers should provide all evidence and supporting authority prior to or during the small claims hearing. Within ten working days of a small claims hearing, the department will issue an abbreviated written decision (determination) containing only the department's conclusions. The determination in a small claims appeal is the final action of the department.

(b) **Executive level appeals.** If an appeal involves an issue of first impression (one for which no agency precedent has been established) or an issue that has industry-wide significance or impact, a taxpayer may request that the petition be heard at the executive level. The request must specify the reasons why an executive level appeal is appropriate. The appeals division will grant or deny the request and will notify the taxpayer of that decision in writing. If granted, the director or the director's designee and an ALJ will hear the matter. The appeals division, on its own initiative, may also choose to hear an appeal at the executive level. The appeals division will notify the taxpayer if the department chooses to hear an appeal at the executive level.

Following the executive level hearing, the appeals division will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer or another division of the department timely files an objection to the proposed determination. Objections must identify specific errors of law or fact. Unless an extension is granted, objections must be postmarked or received by the appeals division within thirty days from the date the proposed determination was issued. The taxpayer or operating division filing objections must also provide the other party with a copy of its objections. The ALJ will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the ALJ and the director's designee, in consultation with the director, may grant a second hearing to hear argument on the objections. The determination in an executive level appeal is the final action of the department.

(c) **Expedited appeals.** On a very limited basis it may be necessary to expedite the review of a petition. Taxpayers or other divisions in the department requesting expedited review must make the request in writing to the appeals division,

with a copy supplied to the other party. The appeals division will grant or deny such requests solely at its discretion. The appeals division will advise the taxpayer and the affected division of its decision pertaining to the expedited review request. This decision is not subject to appeal. Expedited review will be limited to appeals where it is clear that:

(i) There is a particular and extraordinary business necessity;

(ii) Document review is the only issue;

(iii) Only a legal issue remains in an appeal following a remand to an operating division;

(iv) A jeopardy warrant or bankruptcy is likely; or

(v) Urgent review is necessary within the department.

If expedited review is at the taxpayer's request, the determination in an expedited appeal is the final action of the department. If expedited review is requested by the department, the taxpayer may petition for reconsideration as provided in subsection (7) of this section.

(7) **Request for reconsideration.** If a taxpayer believes that an error has been made in a determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Small claim appeals, executive appeals, and appeals expedited at the request of the taxpayer are not subject to reconsideration. The request for reconsideration must specify mistakes in law or fact contained in the determination and should also provide legal authority as to why those mistakes necessitate the reconsideration of the determination. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue that has industry-wide impact or significance. The request for executive reconsideration must also specify the reasons why executive level review is appropriate.

The appeals division may, without a hearing, grant or deny the request for reconsideration. If the request is denied, the department will mail to the taxpayer written notice of the denial and the reason for the denial. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.

(8) **Appeals to board of tax appeals.** A taxpayer may appeal a denial of a petition for correction of an assessment under RCW 82.32.160 or a denial of a petition for refund under RCW 82.32.170 to the board of tax appeals. The board of tax appeals also has jurisdiction to hear appeals taken from department decisions rendered under RCW 82.34.110 (relating to pollution control facilities tax exemptions and credits) and 82.49.060 (relating to watercraft excise tax). The board of tax appeals does not have jurisdiction to hear appeals from determinations involving rulings of future tax liability issued by the taxpayer information and education section. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department for a stay of collection under RCW 82.32.200. See WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection).

(9) **Thurston County superior court.** A taxpayer may also pay the tax in dispute and petition for a refund in Thur-

ston County superior court. The taxpayer must comply with the requirements of RCW 82.32.180.

(10) **Settlements.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement. Taxpayers interested in settling a dispute should submit a written offer to the ALJ. The offer should identify the amount in dispute, why the dispute should be settled, the amount offered in settlement, and why the amount being offered is reasonable.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change;

(ii) A conflict exists between precedents, such as statutes, rules, excise tax bulletins, or specific written instructions to the taxpayer;

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve.

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department;

(ii) The taxpayer challenges a long-standing departmental policy or a rule that the department will not change unless the policy or rule is declared invalid by a court of record;

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case;

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(c) Each settlement is concluded by a closing agreement signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

[Statutory Authority: RCW 82.32.300, 82.01.060 (2) and (4). 05-20-036, § 458-20-100, filed 9/29/05, effective 11/1/05. Statutory Authority: RCW 82.32.300, 90-24-049, § 458-20-100, filed 11/30/90, effective 1/1/91; 83-07-032 (Order ET 83-15), § 458-20-100, filed 3/15/83; Order ET 75-1, § 458-20-100, filed 5/2/75; Order ET 70-3, § 458-20-100 (Rule 100), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-141 Duplicating activities and mailing bureaus.** (1) **Introduction.** This rule discusses the business and occupation (B&O) tax and retail sales and use tax reporting responsibilities of persons who engage in duplicating

activities or who provide mailing bureau services in Washington. Persons engaged in printing activities should refer to WAC 458-20-144 (Printing industry).

(2) **Duplicating activities.** Duplicating is the copying of typed, written, drawn, photographed, previously duplicated, or printed materials using a photographic process such as photocopying, color copying, or blueprinting.

(a) **Sales of duplicated products.** Income from the sale of photostats, photocopies, blueprint copies and other duplicated tangible personal property to consumers is subject to the retailing B&O tax. The measure of tax is the gross proceeds of sale. The seller is also responsible for collecting and remitting retail sales tax on the selling price when making sales to consumers, unless a specific exemption applies. The wholesaling B&O tax applies to the gross proceeds of sale when the buyer purchases the duplicated property for resale without intervening use. The seller must obtain a resale certificate from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Resale certificates).

If the seller is also the manufacturer of the duplicated products, the seller may be eligible for a multiple activities tax credit. Refer to WAC 458-20-19301 (Multiple activities tax credits) for more information about the credit.

(b) **Duplicating as a manufacturing activity.** A person duplicating tangible personal property for sale or commercial or industrial use (the use of manufactured property as a consumer) is subject to the manufacturing B&O tax classification. For further information about manufacturing activities, refer to WAC 458-20-112 (Value of products), WAC 458-20-134 (Commercial or industrial use), and WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(c) **Self-service copying.** Some persons provide consumers with access to duplicating equipment to make their own copies (frequently referred to "self-service copying"). These customers are generally charged on a per page basis. The gross proceeds of sales made to consumers for self-service copying is subject to the retailing B&O tax. The seller is also responsible for collecting retail sales tax, unless a specific exemption applies. In such cases, the person providing access to duplicating equipment is not engaged in a manufacturing activity and charges for self-service copying are not subject to the manufacturing B&O tax.

(d) **Potential litter tax liability.** Chapter 82.19 RCW imposes a litter tax on manufacturers (including duplicators), wholesalers, and retailers of certain products. These products include, but are not limited to, newspapers, magazines, and household paper and paper products. Thus, persons who duplicate tangible personal property for sale or who provide facilities for self-service copying may incur a litter tax liability. The measure of the litter tax is the gross proceeds of sale. For further information about the litter tax, refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax).

(e) **Purchases for resale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of duplicated property is a purchase at wholesale. Examples of items that may be purchased at wholesale include paper, ink, toner, and staples. Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale). Wholesale purchases are not subject to retail sales tax when the buyer pro-

vides a resale certificate to the seller as provided by WAC 458-20-102 (Resale certificates).

(f) **Purchases subject to retail sales or use tax.** A person who engages in duplicating activities and acquires tangible personal property for use as a consumer must pay retail sale tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect retail sales tax. Examples of purchases by a person engaged in duplicating activities that are subject to retail sales tax or use tax include photocopiers, cutting boards, computers, cash registers, and office furniture. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

Persons who engage in duplicating products for sale should refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for information about the sales and use tax exemptions for certain machinery and equipment used directly in a manufacturing operation.

(g) **Example.** Copy Company provides a public area with photocopying equipment and materials (paper, toner, and staples) to allow customers to make their own copies. Copy Company has a separate area where Copy Company employees make copies for customers. The income attributable to copies made both by the customers and by Copy Company employees is subject to the retailing B&O and retail sales taxes. The value of the copies made by Copy Company employees is also subject to the manufacturing B&O tax, and Copy Company may claim a multiple activities tax credit as described above in subsection (2)(a). Litter tax may be due as explained above in subsection (2)(d).

Copy Company may purchase the paper, toner, and staples that are used or provided in both areas at wholesale, if the seller receives a resale certificate. Retail sales or use tax applies to the purchase of photocopying equipment in both areas. The purchase and/or use of the equipment where Copy Company employees make copies may qualify for the machinery and equipment exemption described in WAC 458-20-13601.

(3) **Mailing bureau services.** Mailing bureaus, also referred to as mail houses, prepare for distribution mail pieces such as bulletins, form letters, advertising material, political publications, and flyers as directed by their customers. The customer may provide the mail pieces to be prepared for distribution or the mailing bureau itself may sell the material to the customer. Mailing bureaus that duplicate the material being prepared should also refer to subsection (2), above. Mailing bureaus that print the material being prepared should also refer to WAC 458-20-144.

(a) **Mailing bureau activities.** Activities conducted by mailing bureaus include, but are not limited to, picking up, addressing, labeling, binding, folding, enclosing, sealing, tabbing, and mailing the mail pieces. The mailing bureau generally charges the customer on a per-piece basis for each separate service provided plus the actual cost of any postage.

Charges for labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers are retail sales. RCW 82.04.050 (2)(a). Thus, the retailing B&O tax applies to income received from consumers for services that include addressing, labeling, binding, folding, enclosing, sealing, and/or tabbing. Mailing bureau businesses are also responsible for collecting and

remitting retail sales tax when making sales to consumers, unless a specific exemption applies.

(b) **Measure of tax.** The measure of the B&O and retail sales taxes is the gross proceeds of sale and selling price, respectively. These terms include all consideration paid by the buyer, however identified, without any deduction for costs of doing business, such as material, labor, and delivery costs. RCW 82.04.070 and 82.08.010.

(i) **Postage.** Charges for postage or other delivery costs are included in the measure of tax for both B&O tax and retail sales tax if the costs are part of the consideration paid by the customer. It is immaterial if the amounts charged for postage are stated or shown separately on the sales invoice or reflect actual mailing costs to the mailing bureau. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid by the customer.

(A) **When is postage part of the consideration paid?** Charges for postage costs are considered part of the consideration paid if the permit to use precancelled stamps, a postage meter, or an imprint account for bulk mailings is in the name of the mailing bureau. The mailing bureau is liable to the post office for payment and the customer's payment of such amounts represents a payment on the sale of tangible personal property or the services provided. For further information, refer to WAC 458-20-111 (Advances and reimbursements).

(B) **When is postage not part of the consideration paid?** Charges for postage are not considered part of the consideration paid if the permit to use precancelled stamps or a permit imprint account for bulk mailings is in the customer's name. The mailing bureau in these cases has no primary or secondary liability for payment of the postage costs. (Refer to WAC 458-20-111 for information about advances and reimbursements.)

(ii) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of any situation must be determined after a review of all facts and circumstances. For purposes of the following examples, sales invoices to the customer separately identify charges for postage.

(A) **Example 1.** Mailing Bureau receives mail pieces from Department Store to prepare and mail. Mailing Bureau advises Department Store of the estimated amount of postage. Department Store deposits an amount equal to the estimated cost of postage in its own permit imprint account. The estimated postage is not part of the total consideration paid because the Department Store is personally liable to the post office for postage. The total charge, excluding postage, is the consideration paid by Department Store and subject to tax.

(B) **Example 2.** Assume facts as described above in Example 1. The post office determines that the actual cost of postage exceeds the estimated amount deposited by Department Store in its permit imprint account. Post office transfers the additional amount for postage from Mailing Bureau's account. Mailing Bureau invoices Department Store for the additional amount. The additional amount for postage is not part of the consideration paid and is not included in the measure of tax because Mailing Bureau's liability for payment of the additional postage is limited to that of an agent.

(C) **Example 3.** Mailing Bureau receives from Political Candidate B mail pieces to prepare and mail. Mailing Bureau uses its own postage meter to apply metered postage. Postage is a part of the consideration paid by Candidate B and is included in the measure of tax.

(D) **Example 4.** Mailing Bureau receives pre-stamped mail pieces from Medical Clinic to prepare and mail. The mail pieces qualify for the lower bulk mail rates after Mailing Bureau prepares the mail pieces. The post office refunds the difference between the single piece rate and the bulk mail rate to Mailing Bureau. Mailing Bureau retains the amount due for services rendered and in turn remits the balance of the refunded postage to Medical Clinic. Postage is not a part of the consideration paid and is not included in the measure of tax.

(E) **Example 5.** Mailing Bureau prints, prepares, and mails mail pieces for Non-Profit Organization's fundraising drive. Mailing Bureau applies metered postage using its own postage meter. The charge for postage is a part of the consideration paid and included in the measure of tax.

(F) **Example 6.** Mailing Bureau duplicates, prepares, and mails advertising for Restaurant. Mailing Bureau applies precancelled stamps that it purchases from the post office. The charge for postage is a part of the consideration paid and included in the measure of tax.

(G) **Example 7.** Mailing Bureau picks up mail pieces from Washington City to prepare and mail. Mailing Bureau applies metered postage using its own postage meter. The charge for postage is a part of the consideration paid by Washington City and included in the measure of tax.

(H) **Example 8.** Mailing Bureau prepares and mails advertising for Insurance Company. To apply postage, Mailing Bureau uses a postage meter leased by Insurance Company from a third party vendor. Insurance Company is liable to the third party vendor for payment of postage. The consideration does not include charges for postage.

(I) **Example 9.** Assume same facts as described in Example 8 above. The postage meter account contains insufficient funds required for mailing pieces. Mailing Bureau advances sufficient funds to Insurance Company's metering account. Mailing Bureau invoices Insurance Company for the additional amount. The consideration does not include postage because Mailing Bureau's liability for payment is limited to that of an agent.

(c) **Retail sales tax exemptions.** Certain sales tax exemptions may apply to the sale of tangible personal property or labor and services rendered to tangible personal property.

(i) **Interstate sales of tangible personal property.** The sale of tangible personal property is not subject to retail sales tax when the seller agrees to and does deliver the property outside the state. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for further information about interstate sales.

(ii) **Labor and services rendered in respect to tangible personal property of or for a nonresident.** RCW 82.08.-0265 provides a retail sales tax exemption for charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving tangible personal property of or for a nonresident when the seller agrees to and does deliver the property to the purchaser at a point outside

this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. For further information about this exemption, refer to WAC 458-20-173 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers).

(d) **Purchases for resale.** The purchase of tangible personal property for resale as tangible personal property or to become a component or ingredient of property upon which mailing bureau services will be performed is a purchase at wholesale. Examples of items that may be purchased at wholesale include paper, printing ink, envelopes, and staples. Wholesale purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as provided by WAC 458-20-102 (Resale certificates). Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale) for further information regarding ingredients and components.

(e) **Purchases subject to retail sales or use tax.** A mailing bureau business that purchases, leases, or otherwise acquires tangible personal property for use as a consumer must pay retail sale tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. Examples of such property include photocopiers, cutting boards, computers, office furniture, and equipment to address, label, fold, seal, insert, meter, stamp, or sort. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

(f) **Purchases of mailing lists.** Persons acquiring mailing lists are purchasing an information service regardless of the medium used to provide or transfer the information. Thus, the purchase of a mailing list by a mailing bureau business is not subject to either retail sales or use tax.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-03-053, § 458-20-141, filed 1/11/05, effective 7/1/05. Statutory Authority: RCW 82.32.300, 83-07-034 (Order ET 83-17), § 458-20-141, filed 3/15/83; Order ET 70-3, § 458-20-141 (Rule 141), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-144 Printing industry. (1) Introduction.** This rule discusses the taxability of the printing industry. For information on the taxability of mailing bureau services, refer to WAC 458-20-141, Duplicating industry and mailing bureaus.

(2) **Definition.** The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multigraph, mimeograph, autotyping, addressographing and similar activities.

(3) **Business and occupation tax.** Printers are subject to the business and occupation tax under the printing and publishing classification upon the gross income of the business.

(4) **Retail sales tax.** The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, providing the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even

though such charges may be stated or shown separately on invoices.

RCW 82.04.070 and 82.08.010, respectively, define "gross proceeds of sales" and "selling price." These definitions provide that there is no deduction for "delivery costs." RCW 82.08.010 further provides that there is no deduction for "delivery charges," a term also defined by the statute to include postage. If a printer purchases stamps, applies metered postage using its meter account, or applies its permit imprint, and also charges the customer for the postage, the charge is included in the measure of B&O and/or retail sales tax, unless excluded by another provision of chapters 82.04 and 82.08 RCW. See also WAC 458-20-111 for information about nontaxable advances and reimbursements.

Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

Sales of tickets to theater owners, amusement operators, transportation companies and others are sales for consumption and subject to the retail sales tax. Such tickets are not resold by the theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales and are not subject to the retail sales tax.

Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax. This includes, among others, sales of fuel, furniture, lubricants, machinery, type, lead, slugs and mats.

Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax.

(5) **Commissions and discounts.** There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of tax under either business and occupation tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both these classifications.

In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

(a) The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's

liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

(b) Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-03-052, § 458-20-144, filed 1/11/05, effective 7/1/05; Order ET 70-4, § 458-20-144 (Rule 144), filed 6/12/70, effective 7/12/70.]

**WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.** (1) **Introduction.** This section discusses the application of the business and occupation (B&O), retail sales, and use taxes to laundries, dry cleaners, laundry pickup and delivery services, self-service laundries and dry cleaners, and linen and uniform supply services. It also discusses the tax treatment of laundry services provided to nonprofit health care facilities and income received from coin-operated laundry facilities.

Chapter 514, Laws of 2005, changed the tax reporting responsibilities of persons operating self-service or coin-operated laundry facilities. Refer to subsection (6) of this section for further information.

(2) **What is a laundry or dry cleaning service?** A "laundry or dry cleaning service" is the activity of laundering, cleaning, dying, and pressing of articles such as clothing, linens, bedding, towels, curtains, drapes, and rugs. It also includes incidental mending or repairing. The term applies to services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning services. It also includes pickup and delivery laundry services performed by persons operating in their independent capacity and not as agent for another laundry or dry cleaning service.

(a) **Sales of laundry or dry cleaning services.** The gross proceeds of sale and selling price of laundry or dry cleaning services provided to consumers are subject to the retailing B&O tax and retail sales tax, respectively. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service. RCW 82.04.070 and 82.08.010. The retailing B&O and retail sales taxes also apply to sales of soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property to consumers.

The wholesaling B&O tax applies to the gross proceeds of sale from laundry or dry cleaning services performed for persons reselling these services. The seller must obtain a resale certificate from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Resale certificates).

(b) **Place of sale.** For the purposes of determining a seller's responsibility to remit B&O tax and/or to collect and remit retail sales tax, the place of sale for laundry and dry cleaning services is the place the laundering or dry cleaning is performed. RCW 82.14.020(4) and 82.04.050. For example, a laundry or dry cleaning service located in Washington must collect sales tax from an Oregon resident who brings clothing items to the business for laundering or dry cleaning.



In addition, the gross proceeds are subject to the retailing B&O tax. Even though the customer resides in Oregon, both taxes apply because the laundering or dry cleaning occurs in Washington.

(i) **Seller hiring third-party to perform services.** A customer may purchase laundry or dry cleaning services from a seller who hires another person to perform the actual cleaning activity. In such cases, the customer will drop off and pick up the clothing or other articles to be cleaned at the seller's business location. The place of sale with respect to this sale is the seller's location where the customer drops off and picks up the articles.

(ii) **Seller using agent for pickup and delivery.** If a person providing laundry or dry cleaning services uses an agent such as a hotel or a driver for pickup and delivery of the articles to be cleaned, the place of sale is the seller's location where the cleaning is performed.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of the cleaned article is a purchase at wholesale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates).

The following are examples of items that may be purchased at wholesale:

(i) Dyes, fabric softeners, starches, sizing, and similar articles or substances that become ingredients of the articles cleaned; and

(ii) Soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property that are not used in performing a laundry or dry cleaning services but are resold as tangible personal property.

(d) **Purchases subject to retail sales or use tax.** A laundry or dry cleaning business that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a laundry or dry cleaning service that are subject to retail sales tax or use tax:

(i) Soaps, cleaning solvents, and other articles or substances that do not become ingredients of the articles cleaned;

(ii) Equipment such as washing machines, dryers, presses, irons, fixtures, and furniture;

(iii) Supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery; and

(iv) Items given to customers without charge.

(3) **What are linen and uniform supply services?** "Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and/or similar items whether ownership of the item is in the person operating the linen and uniform supply service or in the customer. RCW 82.08.0202. It also means the supply of diapers and bedding. "Linen and uniform supply services" includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses.

A person providing linen and uniform supply services performs a number of different activities, often at multiple locations. Many of these activities are the same types of activities performed by a person providing laundry or dry cleaning services, such as: Laundering, dry cleaning, pressing, incidental mending, and/or pickup and delivery. Additional activities not generally performed by a person providing laundry or dry cleaning services may include: Providing linen and uniform items customized by application of the customer's business name, company logo, employee names, etc.; measuring and/or issuing uniforms to the customer's employees; repairing or replacing worn or damaged linen and uniform items; and/or performing various administrative functions for the customer, such as inventory control.

(a) **Sales of linen and uniform supply services.** The gross proceeds of sale and selling price from linen and uniform supply services provided to consumers are subject to the retailing B&O tax and retail sales tax, respectively. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service. RCW 82.04.070 and 82.08.010.

(b) **Place of sale.** Effective July 1, 2001, for the purposes of determining a seller of linen and uniform supply services' responsibility to remit B&O tax and to collect and remit retail sales tax, the place of sale is the place of delivery to the customer. For periods before July 1, 2001, the place of sale was the location at which the laundering activity was performed.

For assistance with determining appropriate local sales and use tax rates, the department's geographic information system (GIS) provides a mapping and address lookup system. The system is available on the department's internet site at: <http://dor.wa.gov>.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of the cleaned article is a wholesale sale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates).

The following are examples of items that may be purchased at wholesale:

(i) Linen, uniforms, towels, cabinets, hand soap, and similar property rented or supplied to customers as a part of the laundry and linen supply service; and

(ii) Dyes, fabric softeners, starches, sizing, and similar articles or substances that become ingredients of the articles being cleaned.

(d) **Purchases subject to retail sales or use tax.** A linen or uniform supply service that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a linen or uniform supply service that are subject to retail sales tax or use tax:

(i) Soaps, cleaning solvents, and other articles or substances that do not become ingredients of the articles cleaned;

(ii) Equipment such as washing machines, dryers, presses, irons, fixtures, and furniture; and

(iii) Supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery.

(4) **Customer's responsibility to remit use tax.** Effective July 1, 2002, chapter 367, Laws of 2002, imposes the use tax on certain retail services acquired by consumers without payment of the retail sales tax. Such services include installing, repairing, cleaning, altering, imprinting, or improving tangible personal property. Thus, a consumer must report and pay use tax directly to the department when a seller of laundry or dry cleaning services or linen and uniform supply services fails to collect the retail sales tax.

For example, a person with a restaurant location in Vancouver and another in Portland, Oregon, contracts with an Oregon business for linen and uniform supply services. Each week, the linen and uniform supply service delivers clean linens and uniforms and picks up soiled items for both locations at the person's Portland location. The person's Vancouver location turns in soiled uniforms and linens and receives its supply of clean items at the person's Portland location. The person is responsible for reporting and paying use tax on the value of the linen and uniform supply services used by its Vancouver location. For further discussion about use tax, refer to WAC 458-20-178.

(5) **Laundry agents collecting and distributing laundry.** Persons who collect and/or distribute laundered or dry cleaned items as an agent for a provider of laundry services, dry cleaning services, or linen and uniform supply services are liable for the service and other activities B&O tax on their gross commissions. See WAC 458-20-159 for the record-keeping requirements for showing agency status. The person providing the laundry service, dry cleaning services, or linen and uniform supply service must collect and remit to the department retail sales tax on the total charge made to the customer (see subsections (2) and (3) of this section).

(6) **Self-service and coin-operated laundry facilities.** Effective July 1, 2005, the definition of "retail sale" excludes charges made for the use of self-service or coin-operated laundry facilities. Chapter 514, Laws of 2005. Thus, gross income received from charges for the use of such facilities is subject to the service and other activities B&O tax. Retail sales tax does not apply to these charges.

(a) **Tax reporting responsibilities for periods before July 1, 2005.** Between July 1, 1998, and July 1, 2005, the taxability of self-service and coin-operated laundry facilities was subject to various changes.

(i) Before July 1, 2005, the definition of "retail sale" included charges made for the use of self-service or coin-operated laundry facilities, except as explained below in (a)(ii) of this subsection. For reporting periods occurring before July 1, 2005, gross income derived from charges for the use of these facilities was subject to the retailing B&O tax. In addition, such charges were subject to the retail sales tax.

(ii) Between July 1, 1998, and June 30, 2005, the definition of "retail sale" excluded charges for the use of coin-operated laundry facilities in apartment houses, rooming houses, or mobile home parks when the facilities were provided for the exclusive use of tenants. RCW 82.04.050 (2)(a). As a result, charges for the use of these facilities were not subject to the retailing B&O tax or the retail sales tax. However, the gross proceeds of sale received from these facilities were sub-

ject to the service and other activities B&O tax. Before July 1, 1998, these charges were retail sales and subject to the retailing B&O tax and retail sales tax.

Charges for the use of coin-operated laundry facilities in hotels, motels, trailer camps, and other locations providing lodging or camping facilities to transients remained subject to the retailing B&O and retail sales taxes. Persons providing transient lodging should refer to WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, trailer camps, etc.) in effect during that time.

(b) **Sales of tangible personal property.** Sales of soap, bleach, fabric softener and other supplies to consumers are subject to the retailing B&O tax and retail sales tax. For most sales, the law requires a seller to separately state the retail sales tax from the selling price. However, the law allows a seller making sales of tangible personal property to a consumer from a vending machine to deduct the tax from the total amount received to arrive at the net amount that becomes the measure of the tax. RCW 82.08.050 and 82.08.080.

(c) **Place of sale.** For the purposes of determining a seller's responsibility to remit B&O tax and/or to collect and remit retail sales tax, the place of sale is the location of the facility.

(d) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property is a purchase at wholesale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates). Thus, purchases of soap, bleach, fabric softener and other supplies for resale to customers separate from charges for the use of the laundry facilities are wholesale purchases.

(e) **Purchases subject to retail sales or use tax.** A self-service or coin-operated laundry facility that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a self-service or coin-operated laundry facility that are subject to retail sales tax or use tax:

(i) Washing machines, dryers, fixtures, and furniture; and

(ii) Items given to customers without charge.

(7) **Laundry services performed for nonprofit health care facilities.** For the purpose of this section, "nonprofit health care facilities" means facilities operated by nonprofit organizations providing diagnostic, therapeutic, convalescent, or preventive inpatient or outpatient health care services. The term includes, but is not limited to, nonprofit hospitals, nursing homes, and hospices.

(a) **Sales of laundry services to nonprofit health care facilities.** Effective July 1, 1998, the definition of a retail sale specifically excludes sales of laundry services to nonprofit health care facilities. As a result, charges for laundry services provided to these facilities are not subject to retail sales tax or the retailing B&O tax. However, effective July 1, 1998, the gross proceeds of sale received for providing laundry services to nonprofit health care facilities is subject to the service and other activities B&O tax. For the period of July 1,

1993, through June 10, 1998, the service and other activities B&O tax applied only to sales of laundry services to members by nonprofit associations composed exclusively of nonprofit hospitals.

(b) **Purchases subject to retail sales or use tax.** Persons providing laundry services to nonprofit health care facilities are considered consumers of all items used in providing such services. RCW 82.04.190. As a result, purchases of items such as dyes, fabric softeners, linens, and uniforms are subject to the retail sales tax. The same is true for purchases of washing machines, dryers, fixtures, furniture, and other items of tangible personal property. The buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-20-018, § 458-20-165, filed 9/26/05, effective 10/27/05; 02-23-034, § 458-20-165, filed 11/13/02, effective 12/14/02. Statutory Authority: RCW 82.32.300. 99-13-052, § 458-20-165, filed 6/9/99, effective 7/10/99. Statutory Authority: RCW 82.32.300 and 82.04.050. 94-09-016, § 458-20-165, filed 4/13/94, effective 5/14/94. Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-165, filed 3/15/83; Order ET 73-1, § 458-20-165, filed 11/2/73; Order ET 70-3, § 458-20-165 (Rule 165), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities.** (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51.010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.

The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;

(b) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;

(c) WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen; and

(d) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities.** This subsection provides information about the application of B&O tax to the personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities. For information regarding B&O tax deductions and exemptions for persons operating health care facilities, readers should refer to subsection (3) of this rule.

(a) **Public or nonprofit hospitals.** The gross income of public or nonprofit hospitals derived from providing personal or professional services to inpatients, is subject to B&O tax under the public or nonprofit hospitals classification. RCW 82.04.260. For the purpose of this rule, "public or nonprofit

hospitals" are hospitals, as defined in RCW 70.41.020, operated as nonprofit corporations, operated by political subdivisions of the state (e.g., a hospital district operated by a county government), or operated by but not owned by the state.

Gross income of public or nonprofit hospitals derived from providing personal or professional services for persons other than inpatients is generally subject to B&O tax under the service and other activities classification. RCW 82.04.-290. Thus, for example, amounts received for services provided to outpatients, income received for providing nonmedical services, interest received on patient accounts receivable, and amounts received for providing transcribing services to physicians are subject to service and other activities B&O tax.

(i) **Clinics and departments operated by public or nonprofit hospitals.** Gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the public or nonprofit hospitals classification where the clinic or department is an integral, interrelated, and essential part of the hospital. Otherwise, the gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the service and other activities classification.

Relevant factors for determining whether a medical clinic or department operated by a public or nonprofit hospital is an integral, interrelated, and essential part of the hospital include whether the clinic or department is located at the hospital facility and whether the clinic or department furnishes the type of services normally provided by hospitals, such as 24-hour intake and emergency services.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(A) Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is separate but physically located within the hospital. However, the clinic is open only during regular business hours and provides no domiciliary care or overnight facilities to its patients. The clinic is staffed, equipped, administered, and provides the type of medical services that one would expect to receive in the average physician's office. Acme's medical clinic is not an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the medical clinic are subject to service and other activities B&O tax.

(B) Acme Hospital is a nonprofit hospital. Acme has a cancer treatment facility that is physically located within the hospital. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients. Acme's cancer treatment facility is an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the cancer treatment facility are subject to public or nonprofit hospitals B&O tax.

(ii) **Educational programs and services.** Amounts received by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if they are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax

under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services (i.e., services that will be, have been, or are currently being provided to the participants). Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts derived from educational programs and services are subject to service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(b) **Other hospitals, nursing homes, and similar health care facilities.** The gross income derived from personal and professional services of hospitals, clinics, nursing homes, and similar health care facilities, other than public or nonprofit hospitals described above in subsection (2)(a) and hospitals owned by the state, is subject to service and other activities B&O tax. The gross income received by the state of Washington from operating a hospital or other health care facility, whether or not the hospital or other facility is owned by the state, is not subject to B&O tax. Nursing homes should refer to subsection (6) of this rule for information regarding the quality maintenance fee imposed under chapter 82.71 RCW.

The following definitions apply for purposes of this rule:

(i) "Hospital" has the same meaning as in RCW 70.41.020; and

(ii) "Nursing home" has the same meaning as in RCW 18.51.010.

(c) **Boarding homes.** Effective July 1, 2004, persons operating boarding homes licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed boarding homes should report their gross income derived from providing room and domiciliary care to residents under the licensed boarding homes B&O tax classification. For the purpose of this rule, "boarding home" and "domiciliary care" have the same meaning as in RCW 18.20.020. Refer to subsection (3)(h) of the rule for B&O tax deductions and exemptions available to boarding homes.

(d) **Nonprofit corporations and associations performing research and development.** There is a separate B&O tax rate that applies to nonprofit corporations and nonprofit associations for income received in performing research and development within this state, including medical research. See RCW 82.04.260.

(e) **Can a nursing home or boarding home claim a B&O tax exemption for the rental of real estate?** The primary purpose of a nursing home is to provide medical care to its residents. The primary purpose of boarding homes is to assume general responsibility for the safety and well-being of its residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Boarding homes may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the primary purpose of nursing homes and boarding homes is to provide services and not to

lease or rent real property, no part of the gross income of a nursing home or boarding home may be exempted from B&O tax as the rental of real estate.

(f) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with Medicare, Medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(g) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income amounts paid to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount received from the hospital for providing these services for the hospital. If the service provider subcontracts with third parties, such as physicians or nurses, to help provide medical services as independent contractors, the service provider may not deduct from its gross income amounts paid to the subcontractors where the service provider is personally liable, either primarily or secondarily, for paying the subcontractors. If, however, the hospital is alone liable for paying the subcontractors, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income amounts paid to the subcontractors. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111 (Advances and reimbursements).

(3) **B&O tax deductions and exemptions.** This subsection provides information about several B&O tax deductions and exemptions available to persons operating medical or other health care facilities.

(a) **Organ procurement organizations.** Amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326. This exemption is effective March 22, 2002.

**(b) Contributions, donations, and endowment funds.**

A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts received from a state university for work-study programs or training seminars for doctors, because the university receives business benefits in return, as students receive education and training while enrolling the university's degree programs.

The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

**(c) Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

**(d) Nonprofit kidney dialysis facilities, hospice agencies, and certain nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts received as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nursing homes and homes for unwed mothers operated as religious or charitable organizations include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

**(e) Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to a health or social welfare organization, as defined in RCW 82.04.431, for amounts received directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as com-

penensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the tax return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return. Readers should refer to WAC 458-20-169 (Nonprofit organizations) for additional information regarding this deduction.

For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

**(f) Amounts received under a health service program subsidized by federal or state government.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts received as compensation for health care services covered under the federal Medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

**(i) Effective date of deduction.** The deduction for a public hospital owned by a municipal corporation or political subdivision and for a nonprofit hospital is effective April 2, 2002. Taxpayers who have paid B&O taxes between January 1, 1998, and April 2, 2002, on amounts that would qualify for this deduction are entitled to a refund. In addition, tax liability for accrued but unpaid taxes that would be deductible under this subsection (3)(f) are waived. For information regarding refunds, refer to WAC 458-20-229 (Refunds).

The deduction for a nonprofit community health center or a network of nonprofit community health centers is effective August 1, 2005.

**(ii) Example.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for pro-

viding health care services to Jane, who qualifies for the federal Medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of Medicare, which is B&O tax deductible by Acme, and a Medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the Medicare plus plan pays \$380. Acme may only deduct the \$600 received from Medicare.

(g) **Blood and tissue banks.** Amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax. RCW 82.04.324. For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Boarding homes.** Effective July 1, 2004, licensed boarding home operators are entitled to a B&O tax deduction for amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are Medicaid recipients. RCW 82.04.4337. For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

Effective July 1, 2005, B&O tax does not apply to the amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home. Chapter 514,

Laws of 2005. For purposes of this rule, "nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** Effective July 1, 2006, B&O tax does not apply to the amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. Chapter 514, Laws of 2005. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(4) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, boarding homes, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, retail sales tax must be collected from the buyer and remitted to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are subject to B&O tax under either the public or nonprofit hospital B&O tax classification or the service and other activities classification depending on the person making the charge. For example, charges for drugs physically administered by the seller are subject to B&O tax under either the public or nonprofit hospital classification or the service and other activities classification depending on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, boarding homes, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts received by hospitals, nursing homes, boarding homes, and similar health care facilities for furnishing meals to patients or residents as part of the services provided to those patients or residents are subject to B&O tax under the service and other activities, public or nonprofit hospital, or licensed boarding homes classifications, depending upon the person furnishing the meals.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, boarding homes, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold for cash or credit to doctors, nurses, other employees, and visitors. Some of these facilities may provide meals to their employees at no charge. Under these circumstances, all sales of meals to such persons are subject to retailing B&O and retail sales taxes, including the value of meals provided at no charge to employees. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-119 (Sales of meals). Hospitals, nursing homes, boarding homes, and similar health care facilities that provide free meals to persons other than employees, such as visitors, should refer to WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses) for information about the taxability of meals given away free of charge.

**(c) Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Effective July 1, 2006, sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. Chapter 514, Laws of 2005. This exemption, however, does not apply to the sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

**(i) Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

**(ii) Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

**(iii) Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

**(iv) Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(5) Equipment and supplies used by health care providers. Hospitals, nursing homes, adult family homes, boarding homes, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding exemptions that are available to these health care providers, as well as persons performing medical research and organ procurement organizations.

**(a) Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a properly completed resale certificate to the seller to document the wholesale nature of the sale. Resale certificates may be obtained from the department's web site at <http://dor.wa.gov>, or by calling the department's taxpayer information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

**(b) Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

**(i) How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a person who is not required to obtain a tax registration endorsement from the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

**(ii) Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's web site at: <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706.

**(6) Quality maintenance fee imposed on nursing homes.** Beginning July 1, 2003, RCW 82.71.020 imposes a quality maintenance fee on every nursing home in this state not exempt from the fee under RCW 74.46.091. Quality maintenance fee, however, is not imposed after July 1, 2011. The amount of the quality maintenance fee is in addition to any other tax imposed upon nursing homes. Nursing homes must report the number of patient days and remit the fee to the department on a monthly basis. Persons with questions about how the quality maintenance fee may affect individual nursing home operators or about the exemption provided by RCW 74.46.091 should contact the department of social and health services.

For purposes of this rule, "patient day" means a calendar day of care provided to a nursing home resident, excluding a Medicare patient day. Patient days include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. "Medicare patient day" means a patient day for Medicare beneficiaries on a Medicare Part A stay and a patient day for persons who have opted for managed care coverage using their Medicare benefit.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-14-090, § 458-20-168, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 82.32.300 and 82.04.260(15). 94-11-097, § 458-20-168, filed 5/17/94, effective 6/17/94. Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-168, filed 12/15/87; 87-05-042 (Order 87-1), § 458-20-168, filed 2/18/87; 83-07-033 (Order ET 83-16), § 458-20-168, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-168, filed 6/27/78; Order ET 74-2, § 458-20-168, filed 6/24/74; Order ET 70-3, § 458-20-168 (Rule 168), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers. (1) Introduction.** This rule applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The rule describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

For information on use tax liability associated with vehicles, see WAC 458-20-178, Use tax.

For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192, Indians—Indian country.

Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

**(2) What is a "vehicle"?** For the purposes of this rule, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter 46.16 RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck, camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

**(3) What are the tax consequences when a vehicle sold to a nonresident is delivered in-state?** A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

**(a) Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW 46.16.160; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

**(b) Seller obligations; documentation.** The seller must properly document the following facts:

(i) The buyer is a nonresident of Washington;

(ii) The vehicle is for use outside this state;

(iii) The vehicle is to be removed from the seller's premises under the authority of either:

(A) A trip permit; or

(B) Valid license plates issued for that vehicle by the state of the buyer's residence, with the plates actually affixed to the vehicle upon final delivery; and

(iv) If the vehicle bears Washington state license plates, the seller has removed the Washington plates before delivery.

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery) in substantially the form prescribed in subsection (5) of this rule. The seller must also retain documentation of the buyer's nonresidence, as required in subsection (6) of this rule. If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit.

**(4) What are the tax consequences when a vehicle sold to a nonresident is delivered out-of-state?** A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

**(a) Requirements.** If a vehicle is delivered outside the state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and



retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** The seller must properly document the following facts:

- (i) The buyer's out-of-state address;
- (ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;
- (iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and
- (iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery) in substantially the form prescribed in subsection (5) of this rule. The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

(c) **Documentation when delivery is made by common carrier.** When a vehicle is delivered outside the state by common carrier acting as the seller's agent, no buyer's certificate or seller's certificate is required. Instead, the seller must retain:

- (i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and
- (ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state.

(5) **What forms should be used to document an exempt sale?** The following documents are necessary to substantiate exempt sales to nonresidents. Do not send the documents described in this subsection to the department of revenue, but keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

- From the department's internet web site at <http://dor.wa.gov>
- By facsimile by calling fast fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

Taxpayer Services  
Washington State Department of Revenue  
P.O. Box 47478  
Olympia, Washington 98504-7478

(a) **In-state delivery.** A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

The buyer's affidavit must be substantially in the following form:

#### Buyer's Affidavit

**To Be Completed by the Buyer When the Vehicle Is Delivered to the Buyer in Washington**

I, (Name of buyer), swear that:

I am a resident of the State of . . . . . I am not a resident of the state of Washington and do not claim to be a resident of Washington for any purpose. My home address is (Street and number or rural route), (City, town or post office), (State), (Zip Code). On (Date), I purchased from (Name of seller) the following vehicle:

Make. . . . . Model. . . . .  
Year . . . . . Serial No. (VIN) . . . . .

I am purchasing this vehicle for use outside Washington state. The vehicle will be removed from Washington state by the following means: **(Select and complete one)**

- A. The vehicle will be driven from the seller's premises under the authority of a trip permit numbered. . . . which has been issued to me by the Washington state department of licensing.
- B. The vehicle will not be used in the state of Washington for more than three months and has been licensed in the state of. . . . . That state has issued to me license plates numbered. . . . . Those license plates are valid until (Expiration date of license). The plates have been affixed to the vehicle before it has left the seller's premises.

I, the undersigned buyer, understand that by completing and signing this affidavit I am swearing that I qualify for the tax-exempt purchase of the vehicle described above. In addition, I understand that false or erroneous use of this affidavit will result in liability for unpaid tax with interest and may result in additional penalties.

Dated at . . . . .

.....  
(Buyer's signature)

.....  
Service No. if member of  
armed services  
Subscribed and sworn to  
before me at . . . . .,  
Washington, this . . . . day  
of . . . . ., 20...

My appointment expires: . . . . .

The seller's certificate must be substantially in the following form and be attached to the buyer's affidavit:

#### Seller's Certificate In-State Delivery

I certify that before final delivery of the vehicle described in the buyer's affidavit: (a) I examined trip permit No. . . . which authorizes the vehicle's transit; or (b) license plates numbered. . . . ., issued for the vehicle by the state of. . . . . and expiring. . . . ., were affixed to the vehicle.

I further certify that I have examined and retained a copy of the following item(s) of documentary evidence showing the buyer's residency in the state of. . . . .:

SELECT AT LEAST ONE

..... Driver's license # . . . . .

..... Other picture identification # .....  
 ..... Other (specify) # .....

(If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by ....., agent of the seller.

.....  
 (Signature of seller or representative)  
 .....  
 (Title-officer or agent)

(b) **Delivery out-of-state by seller.** A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

The buyer's certificate must be substantially in the following form:

**Buyer's Certificate  
Out-of-State Delivery**

**To Be Completed by Buyer at Time of Delivery Outside  
Washington State**

(Name of buyer)  
 (Street and number or rural route)  
 (City, town or post office)  
 (State), (Zip Code)  
 On ....., I purchased from (Name of seller) the following vehicle:

Make ..... Model .....  
 Year ..... Serial No. (VIN) .....

Under the terms of the sales agreement the seller was required to, and did on this day, deliver this vehicle to me at (Place of delivery) in (State).

Dated at ....., this. .... day of. ...., 20...  
 .....  
 (Signature)

Service No. if Member of Armed Services  
**THE FOLLOWING STATEMENTS MUST BE INITIALED BY THE  
BUYER:**

..... I certify under penalty of perjury under the laws of the State of Washington that all of the information on this certificate is true. I further understand that I may be subject to criminal prosecution or other legal penalties for providing false information on this certificate.

..... I have completed and signed this certificate *after* the vehicle was delivered to me at the place and time described above.

The seller's certificate must be substantially in the following form and be attached to the buyer's certificate:

**Seller's Certificate  
Out-of-State Delivery**

**To Be Completed at Time of Delivery by the Person Who  
Delivers the Vehicle to the Buyer**

I certify that today I delivered the vehicle described in the buyer's certificate to (Name of buyer), at (Place of delivery). (If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by ....., agent of the seller.

Dated .....

.....  
 (Signature of the person who delivered the vehicle to the buyer)  
 .....  
 (Title-Officer or Agent)

**The Following Statements Must Be Initialed by the Person Who Delivered the Vehicle to the Buyer:**

..... I certify under penalty of perjury under the laws of the State of Washington that all of the information on this certificate is true. I further understand that I may be subject to criminal prosecution or other legal penalties for providing false information on this certificate.

..... I have completed and signed this certificate *after* the vehicle was delivered to the buyer as described above.

(6) **What are a seller's obligations to verify a buyer's statements on nonresidency?** Completion of a buyer's affidavit documents the exempt nature of a sale under RCW 82.08.0264 unless there are facts that negate the presumption that the seller relied on the buyer's affidavit in good faith. The seller, however, must exercise a reasonable degree of care in accepting statements regarding a buyer's nonresidence. If delivery occurs in-state, the seller must examine and retain a copy of at least one form of documentary evidence showing the buyer's out-of-state residence. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required is indicated, for example, in the following circumstances:

(a) If the seller knows that the buyer is living in Washington;

(b) If the buyer gives a Washington address for the purpose of financing the purchase of the vehicle;

(c) If, at the time of sale, arrangements are made for future servicing of the vehicle in the seller's shop and a Washington address or telephone number is shown for the shop customer; or

(d) If the seller has ready access to any other information that discloses that the buyer may be a resident of Washington.

(7) **Do military personnel qualify for the nonresident exemptions?** A member of the armed services who is temporarily stationed in Washington is presumed to be a nonresident, unless that person was a resident of this state when inducted. This presumption does not apply to a civilian employee of the armed services. Nonetheless, a sale to a nonresident member of the armed forces must meet all of the statutory requirements for a retail sales tax exemption or B&O tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW 46.16.480 if the member obtains a 45-day nonresident military temporary license from the department of licensing under RCW 46.16.460 and satisfies the requirements of RCW 46.16.480.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this rule, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

(i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or

(ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) **Are sales to residents of noncontiguous states exempt from Washington retail sales tax?** RCW 82.08.-0269 exempts purchases of tangible personal property from the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) **Are sales to residents of states with no sales tax exempt from Washington retail sales tax?** RCW 82.08.-0273 exempts purchases of tangible personal property from the retail sales tax if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more. That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more may purchase and take delivery of a vehicle in

Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264 or 82.08.-0269.

(10) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW 46.16.160 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer purchases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip permit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee. The Dealer must record in its records the number of the corporate nonresident permit.

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer at Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Dealer retains the exemption certificate and dock receipt required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the

sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer has dual residency in Washington and Arizona for tax purposes and Dealer cannot, in good faith, rely upon a buyer's affidavit from Buyer.

(h) Buyer provides an Oregon driver's license and states that the vehicle will be licensed in Oregon and used out-of-state. However, when Dealer runs a credit check on Buyer, the credit report contains several references to a Washington address for Buyer. In this situation, Dealer cannot rely in good faith on Buyer's single form of identification as proof of nonresidency. The dealer must obtain additional evidence of nonresidency to substantiate a claimed exemption before making a tax-exempt sale in this situation.

(i) Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-14-086, § 458-20-177, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 82.32.300, 83-08-026 (Order ET 83-1), § 458-20-177, filed 3/30/83; Order ET 70-3, § 458-20-177 (Rule 177), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-17803 Use tax on promotional material.** (1) **Introduction.** Persons who distribute or cause to be distributed any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services, are subject to use tax on the value of the property. RCW 82.12.010, 82.12.020, and chapter 367, Laws of 2002. This rule explains the use tax reporting responsibilities of consumers when such property is delivered directly to persons other than the consumer from outside Washington. For the purposes of this rule, the term "promotional material" is used in describing such property where applicable.

This rule provides numerous examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances. For purposes of these examples, presume the promotional material is delivered to persons within Washington.

(2) **What is the use tax?** The use tax complements the retail sales tax by imposing a tax of a like amount when a consumer uses tangible personal property or certain retail ser-

vices within this state. RCW 82.12.020. The tax does not apply to the use of any property or service if the present user, donor, or bailor previously paid retail sales tax under chapter 82.08 RCW with respect to the property used or the service obtained. See WAC 458-20-178 (Use tax) for an explanation of the use tax and use tax reporting requirements.

(3) **Who is liable for the use tax on promotional material?** The use tax is imposed on the consumer. The law provides that with respect to promotional material distributed to persons within this state, the consumer is the person who distributes or causes the distribution of the promotional material. A consumer as defined in this rule is responsible for remitting use tax only if the consumer has nexus in Washington.

(a) **Example 1.** Department Store contracts with Printer in Idaho, to print promotional material advertising sale merchandise available at Department Store's Washington locations. Printer delivers promotional material to Seattle Mailing Bureau, with whom Department Store has contracted to prepare the material for distribution to Department Store's customers. Department Store is the consumer of the promotional material and is liable for use tax on promotional material distributed within Washington. Neither Printer, Seattle Mailing Bureau, nor Department Store's customers are consumers of this promotional material.

(b) **Example 2.** Retailer contracts with Seattle Advertising Agency for advertising services. Advertising Agency makes a single charge for all services, which includes designing, printing, and distributing catalogs to potential customers. Advertising Agency contracts with California Printer to print and prepare for distribution promotional material advertising a new Washington location. Retailer is the consumer of the catalogs and is liable for use tax on the promotional material sent to Washington addresses. Neither Advertising Agency nor potential customers are consumers of this promotional material.

(4) **What is promotional material?** Promotional material is any tangible personal property, except newspapers, displayed or distributed in the state of Washington for the primary purpose of promoting the sale of products or services. Examples of promotional material include, but are not limited to, advertising literature, circulars, catalogs, brochures, inserts (but not newspaper inserts), flyers, applications, order forms, envelopes, folders, posters, coupons, displays, signs, free gifts, or samples (such as carpet or textile samples).

(a) **Is advertising contained on billing statements promotional material?** It is presumed that the primary purpose of billing statements and statements of account is to secure payment for goods or services previously purchased. Thus, unless the facts and circumstances indicate that the primary purpose of the property is to promote the sale of goods and services, billing statements and statements of account are not considered promotional material. Attaching, affixing, or otherwise incorporating property promoting the sale of goods or services does not alter the primary purpose of billing statements and statements of account. However, flyers, inserts, or other separate property enclosed with billing statements or statements of account that promote the sale of goods or services are promotional material and subject to use tax.

(i) **Example 1.** Richland Attorney contracts with Oregon Printer to print and prepare for distribution monthly billing statements and return remittance envelopes to Attorney's

clients. The contract also includes printing and inserting flyers promoting Attorney's estate planning services. The primary purpose of the flyers is to solicit the sale of services. Consequently, the flyers are promotional material. The primary purpose of the billing statements is to secure payment for services rendered. The billing statements are not promotional material.

(ii) **Example 2.** Department Store prints the monthly billing statements for its store credit card in Atlanta, Georgia, and mails them to customers located in Washington. Although the billing statement includes three sentences noting an upcoming sale, this information does not alter the primary purpose of the billing statement, which is to secure payment for services rendered. The billing statements are not promotional material.

(iii) **Example 3.** The following month, Department Store's billing statement includes a detachable coupon for fifteen percent off selected items purchased during a specified period. Although the detachable coupon solicits the sale of goods or services, it does not alter the primary purpose of the billing statement, which is to secure payment for goods or services already purchased. The billing statement and detachable coupon are not promotional material.

(iv) **Example 4.** In the third month, Department Store lengthens the billing statement to include information promoting the grand opening of a location. Although the lengthened portion of the billing statement contains information promoting the sale of goods or services, it does not alter the primary purpose of the billing statement, which is to secure payment for goods or services already purchased. The lengthened billing statement is not promotional material.

(b) **When are envelopes considered promotional material?** Envelopes used solely to mail property to promote the sale of goods or services are considered promotional material and subject to use tax.

Envelopes used to mail nonpromotional material, such as billing statements and statements of account, are used to secure payment for goods purchased or services rendered. The same is true of return envelopes that are enclosed for submitting payment. Unless the facts and circumstances indicate otherwise, the presumption is that the primary purpose of envelopes used for mailing both promotional and nonpromotional material in the same envelope is not to promote the sale of goods and services. Thus, envelopes and return envelopes used for dual purposes are not subject to use tax, even though promotional material may be printed on or attached to the envelopes. Although the imprinted or attached material promotes the sale of goods or services, it does not alter the primary purpose of the envelopes.

(i) **Example 1.** Bank mails brochures, applications, and return envelopes from Atlanta, Georgia, to Washington addresses promoting Bank's credit card. The primary purpose of envelopes used to mail the brochures, applications, and return envelopes is to solicit the sale of services. The envelopes, brochures, and applications are promotional material.

(ii) **Example 2.** Telephone Company mails monthly billing statements to Washington customers from St. Louis, Missouri. Inserts promoting the sale of various telephone accessories are included. Return envelopes to be used in making payment of the statement amount are also enclosed. The primary purpose of the envelopes used to mail the billing

statements and the return envelopes is to secure payment. Neither the mailing envelopes nor the return envelopes are promotional material.

(iii) **Example 3.** Mortgage Company mails monthly billing statements to Washington residents from its administrative offices in Nevada. The enclosed return envelope for customers to use in making payment includes an attachment promoting additional banking services. Although the attachment to the return envelopes contains advertising information, it does not alter the primary purpose of the envelope which is to obtain payment. Neither the mailing envelopes nor the return envelopes are promotional material.

(5) **What is the measure of tax?** The measure of the use tax is the value of the article used. For the purposes of computing the use tax due on promotional material, the measure of tax is the amount of consideration paid for the promotional material without deduction for the cost of materials, labor, or other service charges, even though such charges may be stated or shown separately on invoices. It also includes the amount of any freight, delivery, or other like transportation charge paid or given by the consumer to the seller. The value of the promotional material also includes any tariffs or duties paid. If the total consideration paid does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar materials of like quality and character. RCW 82.12.010.

A consumer who has paid retail sales or use tax that is due in another state with respect to promotional material that is subject to use tax in this state may take a credit for the amount of tax so paid. RCW 82.12.035. For further information, refer to WAC 458-20-178 (Use tax).

(a) **Does the measure of tax include delivery charges?** The measure of tax includes all delivery charges. Postage is a delivery charge and is therefore included in the measure of tax if the cost is part of the consideration paid by the consumer to the seller. RCW 82.08.010 and 82.12.010. It is immaterial if amounts charged for postage are stated or shown separately on invoices. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid. For discussion about when postage is and is not considered part of the consideration paid, please refer to WAC 458-20-141 (Duplicating industry and mailing bureaus).

(b) **What is the measure of tax when a consumer contracts with one party for the promotional material and a third party to prepare the material for distribution?** The use tax is imposed on consumers of certain services rendered in respect to tangible personal property for use in this state when the retail sales tax has not been paid. RCW 82.12.020. These services generally include labor and services rendered in respect to altering, imprinting, or improving tangible personal property and include activities performed typically by mailing bureaus or houses, such as addressing, labeling, binding, folding, sealing, and tabbing.

A consumer of promotional material is subject to use tax on the value of the promotional material and the value of the services used. The value of the service used is the amount of consideration paid for the service and includes delivery charges such as postage. RCW 82.12.010 and 82.08.010.

(c) **What is the measure of tax when a consumer manufactures its own promotional materials?** The measure of use tax is the value of the promotional material. Refer to WAC 458-20-112 (Value of products). A consumer who manufactures its own promotional material may also be conducting manufacturing activities and should refer to WAC 458-20-134 (Commercial or industrial use) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(6) **Determining the applicable local use tax rate.** For purposes of determining the applicable rate of local use tax for promotional material, the following guidelines must be followed unless the consumer obtains prior written approval from the department to use an alternative method. Refer to (c) of this subsection for an explanation of the circumstances under which the department will consider approving alternate methods and how to obtain such approval.

(a) **Operations directed from within Washington.** The applicable local taxing jurisdiction and tax rate is the in-state location from where the consumer directs or manages its Washington operations.

(i) **Example 1.** Department Store operates ten locations in western Washington. Department Store's corporate headquarters, the location from where it manages its in-state operations, is in Seattle. The local use tax rate for Seattle is the applicable rate.

(ii) **Example 2.** Retailer, a national company with headquarters in Chicago, Illinois, operates multiple locations in Washington. Retailer manages its Washington operations from a location in Spokane. The local use tax rate for Spokane is the applicable rate.

(b) **Operations directed from outside Washington.** A consumer that manages or directs its Washington activities from outside the state must equally apportion the value of the promotional material among the local tax jurisdictions where the consumer conducts its business activities. Promotional material that is targeted to specific business locations of the consumer must be apportioned solely between those business locations. Targeted material is material specifically distributed to promote sales of products or services solely at a specific location(s) and at a different price(s) or terms than those offered at all other Washington locations.

(i) **Example 1.** Bank directs the operations of its four Washington branches from its headquarters in Sacramento, California. The branches are in Seattle, unincorporated King County, Tacoma, and Everett. For purposes of determining use tax liability, twenty-five percent of the value of the promotional material must be equally apportioned to Seattle, unincorporated King County, Tacoma, and Everett.

(ii) **Example 2.** Furniture Store, headquartered in Nevada, orders 100,000 flyers from a Portland, Oregon, printer to be mailed to Washington households announcing the opening of its new store in Spokane. Customers will receive a ten percent discount on all items purchased at the Spokane store. This discount will not apply to purchases made at Store C's other Washington locations. The local use tax rate for Spokane is the applicable rate.

(iii) **Example 3.** Restaurant manages the operations of its Washington locations from Portland, Oregon. Restaurant contracts to have coupon books printed and mailed to households in Clark and Cowlitz counties. The coupons are accepted only at the Vancouver and Longview locations. The

value of the promotional material must be equally apportioned to both locations.

(iv) **Example 4.** Ohio Manufacturer has no offices, warehouses, or storefront locations in Washington. A salesperson operating from the person's Kent home solicits sales from Washington distributors for the manufacturer. Manufacturer mails promotional material to its distributors' customers in Washington. The local use tax rate for Kent is the applicable rate.

(v) **Example 5.** Michigan Wholesaler without offices, warehouses, or storefront locations in Washington sends salesperson into Washington to solicit sales. Wholesaler mails promotional material to potential customers in Washington. The applicable local use tax rate is a uniform state-wide local rate of .005.

(c) **Are there alternative methods for determining the place of first use?** For purposes of reporting use tax on promotional material, the department may agree to allow a consumer to use another method of determining the applicable local use tax rate provided that the method proposed by the consumer results in an equal or more equitable distribution of the tax. A consumer may request written approval for the use of an alternative method by contacting the department's taxpayer services division at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-03-051, § 458-20-17803, filed 1/11/05, effective 7/1/05.]

**WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.** (1) **Introduction.** Federal law prohibits Washington from directly imposing taxes upon the United States. Persons doing business with the United States are nonetheless subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

Persons engaged in construction, installation, or improvement to real property of or for the United States should also refer to WAC 458-20-17001 (Government contracting, etc.). Persons building, repairing, or improving streets, roads, and other transportation facilities, which are owned by the United States should also refer to WAC 458-20-171 (Building, repairing or improving streets, roads, etc.). Persons selling cigarettes to the United States or any other federal entity should also refer to WAC 458-20-186 (Tax on cigarettes).

(2) **"United States" defined.**

(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity and whether or not the entity is required to collect and remit retail sales/use tax depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(3) **Prohibition against taxing the United States.** The state of Washington is prohibited from imposing taxes directly upon the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as the business and occupation (chapter 82.04 RCW) and the public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services, including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions given by Congress may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and business and occupation taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

(4) **Persons doing business with the United States.** Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the business and occupation (B&O) and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) **Certain invoiced amounts not included in gross income.** Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. These amounts should be excluded from the per-

son's gross income when reporting on the combined excise tax return if all of the following conditions exist with respect to the goods or services:

(i) The third party directly invoices the United States;

(ii) The United States directly pays the third party; and

(iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) **Tax obligation with respect to the use of tangible personal property.** Persons performing services for the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(i) **Manufacturing articles for commercial or industrial use.** In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112 (Value of products). However, if the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) **Use of government provided property.** When articles or goods used are acquired by bailment, the measure of the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. See WAC 458-20-211 (Leases or rental of tangible personal property, bailments). Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, then the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 (Government contracting, etc.) for more specific tax-reporting information.

(c) **Exemption for certain machinery and equipment.** Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. See WAC 458-20-13601 (Manufacturers and processor for hire—Sales and use tax exemption for machinery and equipment).

(5) **Documenting exempt sales to the United States.** Only those sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United States voucher, or with cash accompanied by the federal SF (Standard Form) 1165.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with

federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

(a) **Documenting tax-exempt sales.** Sellers document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a signed copy of federal SF 1165.

(b) **Payment occurring via government contracted credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at <http://dor.wa.gov>.

(6) **Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes upon persons residing within, or with respect to business transactions conducted upon, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or entities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) **Sales tax collection requirements.** Persons making retail sales to members of the armed forces or others residing within or conducting business upon federal reservations are required to collect and remit retail sales tax from the buyer.

(b) **Cigarette tax stamps.** Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations. However, such stamps need not be affixed to cigarettes sold to the United States or any of its entities including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any of its entities to authorized purchasers, for use on such reservation. See WAC 458-20-186 (Tax on cigarettes).

(7) **Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department of revenue. Federal law prohibits

the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

(a) **Who is an "authorized purchaser"?** A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

(b) **What is a "voluntary unincorporated organization"?** "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

(8) **Purchases by persons using federal funds.** Retail sales or use tax is applicable to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective of whether or not the buyer uses or is reimbursed with federal funds.

(9) **Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) **What activities are entitled to the preferential tax rate?** Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate. The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and ground water;

(iv) Decontaminating and decommissioning of facilities;

and

(v) Performing activities integral and necessary to the direct performance of cleanup.

(b) **What does it mean to be integral and necessary to the direct performance of cleanup?** To be considered an activity integral and necessary to the direct performance of cleanup, the activity must be directly connected to and essential for the furtherance of activities described in subsection (9)(a)(i) through (iv) above. "Directly connected to and essential for" means that there is both a sequential relationship and a necessity relationship between activities eligible for the tax treatment under subsection (9)(a)(v) above and



those activities described in subsection (9)(a)(i) through (iv) above.

(i) **Sequential relationship.** The sequential relationship means that the activity directly precedes, directly follows, or is concurrent with the activity in question.

(ii) **Necessity relationship.** The necessity relationship means that the activity under subsection (9)(a)(v) above must take place in order for the direct cleanup to take place. In other words, the activity under subsection (9)(a)(v) above must be more than just highly desirable; the activity under subsection (9)(a)(v) above must be indispensable to the direct cleanup. As used in this subsection (9)(b)(ii), the phrase "direct cleanup" refers to those activities described in subsection (9)(a)(i) through (iv) above.

(c) **Clean-up examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) Company C is a land excavation contractor who contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up. Later Company C contracts with Prime Contractor to grade land for a general-purpose road that is not used for any cleanup purposes. The contract to grade the road does not qualify for the rate under RCW 82.04.263 because road grading is not an activity involving the physical act of cleaning up.

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of accounting is not an activity involving the physical act of cleaning up, nor is it directly connected to and essential for any of the cleanup activities listed in subsection (9)(a)(i) through (iv) above.

(iii) Company E is an environmental engineering company which contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are directly connected to and essential for removing contamination in soils.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security at clean-up sites. Security services at clean-up sites are directly connected to and essential for clean-up services. If the attribution of income to security services performed at the clean-up sites was negotiated and reflected in Company F's contract with the Prime Contractor, before the provision of those services, that income is eligible for the preferential tax rate under RCW 82.04.263. If Company F cannot identify in the contract the income attributable to security services performed at the clean-up sites, but can substantiate that security services performed at clean-up sites is the predominant activity/services performed under the contract, the income attributable to the entire contract qualifies for the preferential tax rate.

(d) **Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The "combined excise tax return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's combined excise tax return. Refer to WAC 458-20-178 for detailed information regarding use tax.

(10) **Sales to foreign governments or foreign diplomats.** For specific details concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at <http://dor.wa.gov>.

[Statutory Authority: RCW 82.32.300, 82.01.060(1), and 34.05.230. 05-03-002, § 458-20-190, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 82.32.300, 83-07-033 (Order ET 83-16), § 458-20-190, filed 3/15/83; Order ET 75-1, § 458-20-190, filed 5/2/75; Order ET 70-3, § 458-20-190 (Rule 190), filed 5/29/70, effective 7/1/70.]

## **WAC 458-20-194 Doing business inside and outside the state. (1) Introduction.**

(a) This section applies to persons entitled to apportion income under RCW 82.04.460(1). Specifically this section applies to taxpayers who maintain places of business both within and without the state that contribute to the rendition of services and who are taxable under RCW 82.04.290, 82.04.2908, or any other statute that provides for apportionment under RCW 82.04.460(1). Persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule, should use this section. In addition, this section describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1). Nexus is described in subsection (2) of this section; separate accounting in subsection (3) of this section; and cost apportionment in subsection (4) of this section.

(b) Readers may also find helpful information in the following rules:

(i) WAC 458-20-14601 (Financial institutions—Income apportionment).

(ii) WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property).

(iii) WAC 458-20-179 (Public utility tax).

(iv) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(v) WAC 458-20-236 (Baseball clubs and other sport organizations).

(c) The examples included in this section identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

**(2) Nexus.**

**(a) Place of business - minimum presence necessary for tax.** The following discussion of nexus applies only to gross income from activities subject to apportionment under this rule. A place of business exists in a state when a taxpayer engages in activities in the state that are sufficient to create nexus. Nexus is that minimum level of business activity or connection with the state of Washington which subjects the business to the taxing jurisdiction of this state. Nexus is created when a taxpayer is engaged in activities in the state, either directly or through a representative, for the purpose of performing a business activity. It is not necessary that a taxpayer have a permanent place of business within a state to create nexus.

**(b) Examples.** The following examples demonstrate Washington's nexus principles.

(i) Assume an attorney licensed to practice only in Washington performs services for clients located in both Washington and Florida. All of the services are performed within Washington. The attorney does not have nexus with any state other than Washington.

(ii) Assume the same facts as the example in (b)(i) of this subsection, plus the attorney attends continuing education classes in Florida related to the subject matter for which his Florida clients hired him. The attorney's presence in Florida for the continuing education classes does not create nexus because he is not engaging in business in Florida.

(iii) Assume the same facts as the example in (b)(ii) of this subsection, plus the attorney is licensed to practice law in Florida and frequently travels to Florida for the purpose of conducting discovery and trial work. Even though the attorney does not maintain an office in Florida, the attorney has nexus with both Washington and Florida.

(iv) Assume an architectural firm maintains physical offices in both Washington and Idaho. The architectural firm has nexus with both Washington and Idaho.

(v) Assume an architectural firm maintains its only physical office in Washington, and when the firm needs a presence in Idaho, it contracts with nonemployee architects in Idaho instead of maintaining a physical office in Idaho. Employees of the Washington firm do not travel to Idaho. Instead, the contract architects interact directly with the clients in Idaho, and perform the services the firm contracted to perform in Idaho. The architectural firm has nexus with both Washington and Idaho.

(vi) Assume the same facts as the example in (b)(v) of this subsection except the contracted architects never meet with the firm's clients and instead forward all work products

to the firm's Washington office, which then submits that work product to the client. In this case, the architectural firm does not have nexus with Idaho. The mere purchase of services from a subcontractor located in another state that does not act as the business' representative to customers does not create nexus.

(vii) Assume that an accounting firm maintains its only office in Washington. The accounting firm enters into contracts with individual accountants to perform services for the firm in Oregon and Idaho. The contracted accountants represent the firm when they perform services for the firm's clients. The firm has nexus with Washington, Oregon, and Idaho.

(viii) Assume that an accounting firm maintains its only office in Washington and has clients located in Washington, Oregon, and Idaho. The accounting firm's employees frequently travel to Oregon to meet with clients, review client's records, and present their findings, but do not travel to Idaho. The accounting firm has nexus with Washington and Oregon, but does not have nexus with Idaho.

(ix) Assume that a sales representative earns commissions from the sale of tangible personal property. The sales representative is located in Oregon and does not enter Washington for any business purpose. The sales representative contacts Washington customers only by telephone and earns commissions on sales of tangible personal property to Washington customers. The sales representative does not have nexus with Washington and the commissions earned on sales to Washington customers are not subject to Washington's business and occupation tax.

(x) The examples in this subsection (2) apply equally to situations where the Washington activities and out-of-state activities are reversed. For example, in example (b)(ix) of this subsection, if the locations were reversed, the sales representative would have nexus with Washington, but not in Oregon.

**(3) Separate accounting.**

**(a) In general.** "Separate accounting" refers to a method of accounting that segregates and identifies sources or activities which account for the generation of income within the state of Washington. Separate accounting is distinct from cost apportionment, which assigns a formula portion of total worldwide income to Washington. A separate accounting method must be used by a business entitled to apportion its income under RCW 82.04.460(1) if this use results in an accurate description of gross income attributable to its Washington activities.

**(b) Accuracy.** Separate accounting is accurate only when the activities that significantly contribute, directly or indirectly, to the production of income can be identified and segregated geographically. Separate accounting thus links taxable income to activities occurring in a discrete jurisdiction. The result is inaccurate when services directly supporting these activities occur in different jurisdictions. For example, if a taxpayer provides investment advice to clients in Washington, but performs all of its research and due diligence activities in another state, then separate accounting would not be accurate. However, if instead of research and due diligence, only the client billing activity is performed in another state, then separate accounting would be allowed.

(c) **Approved methods of separate accounting.** The following methods of separate accounting are acceptable to the department, if accurate:

(i) **Billable hours of employees or representative third parties performing services in Washington.** If a business charges clients an hourly rate for the performance of services, and the place of performance of the employee, contractor, or other individual whose time is billed is reasonably ascertainable, then the billable hours may be used as a basis for separate accounting. The gross amount received from hours billed for services performed in Washington should be reported.

(ii) **Specific projects or contracts.** A business may assign the revenue from specific projects or contracts in or out of Washington by the primary place of performance. For example:

(A) A consulting business with no other presence in Washington that agrees to provide on-site management consulting services for a Washington business and receives five hundred thousand dollars in payment for the project must report five hundred thousand dollars in gross income to Washington.

(B) If the same business gets another Washington client for on-site management consulting, and receives another payment of five hundred thousand dollars, the business must report an additional five hundred thousand dollars in gross income to Washington.

(C) If a business contracts to distribute advertisements for another business within the state of Washington, the gross amount received for this action should be reported as Washington income.

(iii) **Other reasonable and accurate methods—Notice to the department.**

(A) A taxpayer may report with, or the department may require, the use of one of the alternative methods of separate accounting.

(B) A taxpayer reporting under this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (c)(iii)(E) of this subsection.

(C) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, then the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the separate accounting method in (c)(i) or (ii) of this subsection or cost apportionment under subsection (4)(a) through (h) of this section, the department may impose the alternate method for future periods only.

(D) A taxpayer may request that the department approve an alternative method of separate accounting by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(E) The taxpayer or the department, in requesting or imposing an alternate method of separate accounting, must

demonstrate by clear and convincing evidence that the separate accounting methods in (c) of this subsection do not fairly represent the extent of the taxpayer's business activity in Washington.

(4) **Cost apportionment.**

(a) **Apportionment ratio.**

(i) Each cost must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Taxpayers must file returns using costs calculated based on the taxpayer's most recent fiscal year for which information is available, unless there is a significant change in business operations during the current period. A significant change in business operations includes commencement, expansion, or termination of business activities in or out of Washington, formation of a new business entity, merger, consolidation, creation of a subsidiary, or similar change. If there is a significant change in business operations, then the taxpayer must estimate its cost apportionment formula based on the best records available and then make the appropriate adjustments when the final data is available.

(ii) The apportionment ratio is the cost of doing business in Washington divided by the total cost of doing business as described in RCW 82.04.460(1). The apportionment ratio is calculated under this section as follows. The denominator of the apportionment ratio is the worldwide costs of the apportionable activity and the numerator is all costs specifically assigned to Washington plus all costs assigned to Washington by formula, as described below. Costs are calculated on a worldwide basis for the tax reporting period in question. The tax due to Washington is calculated by multiplying total income times the apportionment ratio times the tax rate. Available tax credits may be applied against the result. Statutory interest and penalties apply to underreported income. For the purposes of this rule, "total income" means gross income under the tax classification in question, less deductions, calculated as if the B&O tax classification applied on a worldwide basis.

(b) **Place of business requirement.** A taxpayer must maintain places of business within and without Washington that contribute to the rendition of its services in order to apportion its income. This "place of business" requirement, however, does not mean that the taxpayer must maintain a physical location as a place of business in another taxing jurisdiction in order to apportion its income. If a taxpayer has activities in a jurisdiction sufficient to create nexus under Washington standards, then the taxpayer is deemed to have a "place of business" in that jurisdiction for apportionment purposes. See subsection (2) of this section.

(c) **Noncost expenditures.** The following is a list of expenditures that are not costs of doing business within the meaning of RCW 82.04.460 and are therefore excluded from both the numerator and the denominator of the apportionment ratio. Expenditures that are not costs of doing business include expenditures that exchange one business asset for another; that reflect a revaluation of an asset not consumed in the course of business; or federal, state, or local taxes measured by gross or net business income. This list is not exclu-

sive. Costs of an activity taxable under another B&O tax classification are also excluded from the apportionment ratio. Similarly, the costs of acquiring a business by merger or otherwise, including the financing costs, are not the costs of doing the apportioned business activity and must be excluded from the cost apportionment calculation.

(i) The cost of acquiring assets that are not depreciated, amortized, or otherwise expensed on the taxpayer's books and records on the basis of generally accepted accounting principles (GAAP), or a loss incurred on the sale of such assets. For example, expenditures for land and investments are excluded from the cost apportionment formula.

(ii) Taxes (other than taxes specifically related to items of property such as retail sales or use taxes and real and personal property taxes).

(iii) Asset revaluations such as stock impairment or goodwill impairment.

(iv) Costs of doing a business activity subject to the B&O tax under a classification other than RCW 82.04.290 or 82.04.2908. For example, if a taxpayer were subject to manufacturing, wholesaling and service and other activities B&O tax, the costs associated with a warehouse and a manufacturing plant (property and employee costs) are excluded from the cost apportionment formula. But if costs support both the service activity and either manufacturing or wholesaling (for example, costs associated with headquarters or joint operating centers), then those costs must be included in the cost apportionment formula without segregating the service portion of the costs.

(d) **Specifically assigned costs.** Real or tangible personal property costs, employee costs, and certain payments to third parties are specifically assigned under (e) through (g) of this subsection.

(e) **Property costs.**

(i) **Definitions.** Real or tangible personal property costs are defined to include:

(A) Depreciation as reported on the taxpayer's books and records according to GAAP, provided that if a taxpayer does not maintain its books and records in accordance with GAAP, it may use tax reporting depreciation. A taxpayer may not change its method of calculating depreciation costs without approval of the department;

(B) Maintenance and warranty costs for specific property;

(C) Insurance costs for specific property;

(D) Utility costs for specific property;

(E) Lease or rental payments for specific property;

(F) Interest costs for specific property; and

(G) Taxes for specific property.

(ii) **Assignment of costs.** Real or tangible personal property costs are assigned to the location of the property. Property in transit between locations of the taxpayer to which it belongs is assigned to the destination state. Property in transit between a buyer and seller and included by a taxpayer in the denominator of the apportionment ratio in accordance with its regular accounting practices is assigned to the destination state. Mobile or movable property located both within and without Washington during the measuring period is assigned in proportion to the total time within Washington during the measuring period. An automobile assigned to a traveling employee is assigned to the state to which the

employee's compensation is assigned below or to the state in which the automobile is licensed. Where a business contracts for the maintenance, warranty services, or insurance of multiple properties, the relative rental or depreciation expense may be used to assign these costs.

(f) **Employee costs.**

(i) **Definitions.** For the purposes of this subsection:

(A) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to or accrued to employees for personal services. Employer contributions under a qualified cash plan, deferred arrangement plan, and nonqualified deferred compensation plan are considered compensation. Stock based compensation is considered compensation under this rule to the extent included in gross income for federal income tax purposes.

(B) "Employee" means any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee, but does not include corporate officers.

(ii) **Allocation method.** Employee costs include all compensation paid to employees and all employment based taxes and other fees, for example, amounts paid related to unemployment compensation, labor and industries insurance premiums, and the employer's share of Social Security and Medicare taxes. An employee's compensation is assigned to Washington if the taxpayer reports the employee's wages to Washington for unemployment compensation purposes. Employee wages reported for federal income tax purposes may be used to assign the remaining compensation costs.

(g) **Representative third-party costs.**

(i) **Definitions.** For the purposes of this section:

"Representative third party" includes an agent, independent contractor, or other representative of the taxpayer who provides services on behalf of the taxpayer directly to customers. The term includes leased employees who meet the standards under (g) of this subsection.

(ii) **Allocation method.** Payments to a representative third party are assigned to the third party's place of performance. For example, if a business subcontracts with a representative third party who provides services on behalf of the taxpayer from a California location, the cost of compensating the representative third party is assigned to California. This is true even if the third party provides services to Washington customers. Conversely, the cost of compensating a representative third party providing services to California customers from a Washington location is assigned to Washington.

(iii) **Examples.**

(A) X, a Washington business, hires Taxpayer to design and write custom software for a document management system. Taxpayer subcontracts with Z, whose employees determine the needs of X, negotiate a statement of work, write the custom software, and install the software. Z's employees perform all of these services on-site at the X business location. Taxpayer's payments to Z are representative third-party costs and specifically assigned to Washington.

(B) Taxpayer, a service provider, subcontracts with X, who agrees to maintain a customer service center where staff will answer telephone inquiries about Taxpayer's services. X in turn subcontracts with Z, whose employees actually respond to questions from a phone center located in California. The payments by taxpayer to X are representative third-

party costs with respect to Taxpayer because X is responsible for providing the staff of the service center. The payments to X are specifically assigned to California.

(C) Taxpayer sells various manufacturers' products at wholesale on a commission basis. Taxpayer subcontracts with X, who agrees to act as Taxpayer's sales representative on the West Coast. Taxpayer has various other sales representatives working on as independent contractors, who are assigned territories, but may make sales from an office or through in-person visits, or a combination of both. Taxpayer does not maintain records sufficient to show the representatives' places of performance. Taxpayer may use sales records and the standards under (h) of this subsection to assign commissions by each subcontractor.

**(h) Costs assigned by formula.**

(i) Costs not specifically assigned under (e) through (g) of this subsection and not excluded from consideration by (c) of this subsection are assigned to Washington by formula. These costs are multiplied by the ratio of sales in Washington over sales everywhere. For example, if a business has one thousand dollars in other unassigned costs and sales of ten thousand dollars in each of the four states in which it has nexus under Washington standards (including Washington), twenty-five percent (\$10,000/\$40,000), or two hundred fifty dollars of the other costs are assigned to Washington.

(ii) Sales are assigned to where the customer receives the benefit of the service. If the location where the services are received is not readily determinable, the services are attributed to the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services are attributed to the office of the customer to which the services are billed.

(iii) If under the method described above a sale is attributed to a location where the taxpayer does not have nexus under Washington standards, the sale must be excluded from both the numerator and denominator of the sales ratio. For the purposes of this calculation only, the department will presume a taxpayer has nexus anywhere the taxpayer has employees or real property, or where the taxpayer reports business and occupation, franchise, value added, income or other business activity taxes in the state. The burden is on the taxpayer to demonstrate nexus exists in other states.

**(i) Alternative methods.**

(i) A taxpayer may report with, or the department may require, the use of one of the alternative methods of cost apportionment described below:

(A) The exclusion of one or more categories of costs from consideration;

(B) The specific allocation of one or more categories of costs which will fairly represent the taxpayer's business activity in Washington; or

(C) The employment of another method of cost apportionment that will effectuate an equitable apportionment of the taxpayer's gross income.

(ii) A taxpayer reporting under (i) of this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax

reporting periods unless it is demonstrated another method is necessary under the standard in (i)(v) of this subsection.

(iii) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the cost apportionment method in (a) through (h) of this subsection and separate accounting is unavailable, the department may impose the alternate method for future periods only.

(iv) A taxpayer may request that the department approve an alternative method of cost apportionment by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(v) The taxpayer or the department, in requesting or imposing an alternate method, must demonstrate by clear and convincing evidence that the cost apportionment method in (a) through (h) of this subsection does not fairly represent the extent of the taxpayer's business activity in Washington.

**(5) Effective date.** This amended rule shall be effective for tax reporting periods beginning on January 1, 2006, and thereafter.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-24-054, § 458-20-194, filed 12/1/05, effective 1/1/06. Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-194, filed 3/30/83; Order ET 70-3, § 458-20-194 (Rule 194), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-196 Bad debts. (1) Introduction.**

(a) **New laws effective July 1, 2004.** This rule provides information about the tax treatment of bad debts under the business and occupation (B&O), public utility, retail sales, and use taxes, and reflects legislation enacted in 2003 and 2004 conforming Washington law to provisions of the national Streamlined Sales and Use Tax Agreement. See chapter 168, Laws of 2003 and chapter 153, Laws of 2004. The new laws related to bad debts are effective July 1, 2004.

(b) **Bad debt deduction for accrual basis taxpayers.** Bad debt credits, refunds, and deductions occur when income reported by a taxpayer is not received. Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt credit, refund, or deduction as described in this rule. For information on cash and accrual accounting methods, refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods). Refer to WAC 458-20-198 (Installment sales, method of reporting) and WAC 458-20-199(3) for information about reporting installment sales.

(c) **Relationship between retailing B&O tax deduction and retail sales tax credit.** Generally, a retail sales tax credit for bad debts is reported as a deduction from the measure of sales tax on the excise tax return. The amount of this deduction, or the measure of a recovery of sales tax that must

be reported, is the same as the amount reported as a deduction or recovery under the retailing B&O tax classification.

(d) **Relationship to federal income tax return.** Washington credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, where the taxpayer is an exempt entity for federal purposes), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Washington tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

(2) **Retail sales and use tax.**

(a) **General rule.** Under RCW 82.08.037 and 82.12.037, sellers are entitled to a credit or refund for sales and use taxes previously paid on "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003. Taxpayers may claim the credit or refund for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of any credit or refund must be adjusted to exclude amounts attributable to:

- (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (ii) Expenses incurred in attempting to collect debt; and
- (iii) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** If a taxpayer takes a credit or refund for sales or use taxes paid on a bad debt and later collects some or all of the debt, the amount of sales or use tax recovered must be repaid in the tax-reporting period during which collection was made. The amount of tax that must be repaid is determined by applying the recovered amount first proportionally to the taxable price of the property or service and the sales or use tax thereon and secondly to any interest, service charges, and any other charges.

(3) **Business and occupation tax.**

(a) **General rule.** Under RCW 82.04.4284, taxpayers may deduct from the measure of B&O tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of the deduction must be adjusted to exclude amounts attributable to:

- (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (ii) Sales or use taxes payable to a seller;
- (iii) Expenses incurred in attempting to collect debt; and
- (iv) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** Recoveries received by a taxpayer after a bad debt is claimed are applied under the rules described in subsection (2)(b) of this section if the transaction involved is a retail sale. The amount attributable to "taxable price" is reported under the retailing B&O tax classification. If the recovery of debt is not related to a retail sale, recovered amount is applied proportionally against the components of

the debt (e.g., interest and principal remaining on a wholesale sale).

(c) **Extracting and manufacturing classifications.** Bad debt deductions are only allowed under the extracting or manufacturing classifications when the value of products is computed on the basis of gross proceeds of sales.

(4) **Public utility tax.** Under RCW 82.16.050(5), taxpayers may deduct from the measure of public utility tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. No deduction is allowed for collection or other expenses.

(5) **Application of payments - general rule.** The special rules for application of payments received in recovery of previously claimed bad debts described in subsections (2)(b) and (3)(b) of this section are not used for other payments. Payments received before a bad debt credit, refund, or deduction is claimed should be applied first against interest and then ratably against other charges. Another commercially reasonable method may be used if approved by the department.

(6) **Assigned debt and installment sales.**

(a) **General rule.** If a person makes a retail sale under an installment sales contract and then legally assigns his or her rights under the contract to another party, the assignee "steps into the shoes" of the person making the sale and may claim a bad debt credit or refund for unpaid retail sales tax to the extent a credit or refund would have been available to the original seller and to the extent that the assignee actually incurs a loss. The seller's B&O tax deduction for bad debt may not be claimed by an assignee. A retail sales tax bad debt credit or refund for unpaid sales tax is available only to the person who makes the retail sale or an assignee under the contract. For example, a bank that loans money to the purchaser of a vehicle may not claim a retail sales tax bad debt credit or refund. The bank did not sell the vehicle and is not an assignee of the dealer who made the retail sale.

(b) **Discounts.** A person who makes a retail sale on credit and then assigns the sales contract in exchange for less than the face value of the contract may not claim a bad debt credit, refund, or deduction for the difference between the face value and the amount received. The discount is a nondeductible cost of doing business, not a bad debt. An assignee of a retail sales contract that pays less than face value for the contract is not required to reduce the amount of a retail sales tax bad debt credit or refund in proportion to the amount of the discount. The assignee may take a credit or refund for the amount that would have been available to the original seller if the original seller had retained the contract and received the payments made by the buyer.

(c) **Recourse financing.** An assignee who receives payment on a bad debt from the assignor must reduce the sales tax credit in proportion to the payment. The assignor may claim a sales tax credit and retailing B&O tax deduction in proportion to the payment if obligated to make the payment and otherwise qualified under this rule.

(d) **Documentation.** All persons claiming a bad debt credit for installment contracts must retain appropriate documentation, including documentation establishing:

(i) The amount of the original sale by the seller, and component amounts necessary to determine that amount, such as credits for trade-ins, down payments, and individual amounts charged for different products;

(ii) The buyer's equity in any trade-in property;

(iii) The contract principal owed at the time of repossession, if any; and

(iv) The deductibility of the debt as worthless for federal income tax purposes.

(7) **Reserve method.** Ordinarily, taxpayers must report bad debt refunds, credits or deductions for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. An addition to a reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable. When the reserve method is employed, an adjustment to the amount of loss deducted must be made annually to make the total loss claimed for the tax year coincide with the amount actually sustained.

(8) **Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this section). It is assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) Seller makes a retail sale of goods with a selling price of \$500 and pays \$40 in sales tax to the department. No payment is received by Seller at the time of sale. One and a half years later, no payment has been received by Seller, and the balance with interest is \$627. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a bad debt sales tax credit or refund in the amount of \$40, a B&O tax deduction of \$500 under the retailing B&O tax classification, and a B&O tax deduction of \$87 under the service and other activities B&O tax classification.

(b) The facts are the same as in (a) of this subsection, except that six months after the credit and deduction are claimed, a \$50 payment is received on the debt. Recoveries received on a retail sale after a credit and deduction have already been claimed must be applied first proportionally to the taxable price and sales tax thereon in order to determine the amount of tax that must be repaid. Therefore, Seller must report \$4, or  $\$50 \times (\$40/\$540)$ , of sales tax on the current excise tax return and \$46, or  $\$50 \times (\$500/\$540)$  under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$40 credit is reduced to zero.

(c) Seller makes a retail sale of goods on credit for \$500 and pays \$40 in sales tax to the department. No payment is received at the time of sale. Over the following year, regular payments are received and the debt is reduced to \$345, exclusive of any interest or service charges. The \$345 represents sales tax due to Seller in the amount of \$26, or  $\$345 \times (\$40/\$540)$ , and \$319 remaining of the original purchase price, or  $\$345 \times (\$500/\$540)$ . Payments cease. Six months later the balance with interest and service fees is \$413. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a sales tax refund or credit on the current excise tax return of \$26, a deduction under the retailing B&O tax classification of \$319, and a deduction under the service and other activities B&O tax classification of \$68.

(d) The facts are the same as in (c) of this subsection, except that before Seller charges off the debt, Seller repossesses the goods. At that time, the goods have a fair market value of \$250. No credit is allowed for repossessed property, so the value of the collateral must be applied against the outstanding balance. After the value of the collateral is applied, Seller has a remaining balance of \$163, or  $\$413 - \$250$ . The allocation rules for recoveries do not apply because a bad debt credit or refund has not yet been taken. The value is applied first against the \$68, or  $\$413 - \$345$ , of interest, so the \$163 remaining is attributable entirely to taxable price and sales tax. Any costs Seller may incur related to locating, repossessing, storing, or selling the goods do not offset the value of the collateral because no credit is allowed for collection costs. Seller is entitled to a sales tax refund or credit in the amount of \$12, or  $\$163 \times (\$40/\$540)$  and deduction of \$151, or  $\$163 \times (\$500/\$540)$  under the retailing B&O tax classification. If Seller later sells the repossessed goods, Seller must pay B&O tax and collect retail sales tax as applicable. If the sales price of the repossessed goods is different from the fair market value previously reported and the statute of limitations applicable to the original transaction has not expired, Seller must report the difference between the selling price and the claimed fair market value as an additional bad debt credit or deduction or report it as an additional recovery, as appropriate.

(e) Seller sells a car at retail for \$1000 and charges the buyer an additional \$50 for license and registration fees. Seller accepts trade-in property with a value of \$500 in which the buyer has \$300 of equity. (The value of trade-in property of like kind is excluded from the selling price for purposes of the retail sales tax. Refer to WAC 458-20-247 for further information.) Seller properly bills the buyer for \$40 of sales tax, for a total of \$1090 owed to Seller by the buyer. Seller

pays the department the \$40 in sales tax. No payment other than the trade-in is received by Seller at the time of sale. Eight months later, Seller has not received any payment. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or \$1090 - \$300. Seller is entitled to claim a sales tax credit or refund of \$29, or  $790 \times (\$40/\$1090)$  of sales tax, and a deduction of \$725, or  $790 \times (\$1000/\$1090)$  under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

(f) Seller sells a car at retail for \$1000, and charges the buyer an additional \$50 for license and registration fees. Seller properly bills the buyer for \$80 of sales tax and remits it to the department. No money is received from the buyer at the time of sale. Eight months later Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller claims an \$80 sales tax credit, a \$1000 retailing B&O tax deduction, and an additional amount under the service and other activities classification for accrued interest. Six months after that, Seller receives a \$200 payment from the buyer. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and the sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Seller must report \$15, or  $200 \times (\$80/\$1080)$  of sales tax and \$185, or  $200 \times (\$1000/\$1080)$  of income under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$80 sales tax credit is reduced to zero.

(g) Seller sells a car at retail for \$1000, and charges the buyer an additional \$50 for license and registration fees. Seller accepts trade-in property with a value of \$500 in which the buyer has \$300 of equity. Seller properly bills the buyer for \$40 of sales tax for a total of \$1090 owed to Seller by the buyer. No payment other than the trade-in is received by Seller at the time of sale. Eight months later, no payment has been received by Seller. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or \$1090 - \$300. Seller is entitled to claim a sales tax credit or refund of \$29, or  $790 \times (\$40/\$1090)$  of sales tax, and a deduction of \$725, or  $790 \times (\$1000/\$1090)$  under the retailing B&O tax classification, exclusive of any deduction for accrued interest. Six months after that, Seller receives a \$200 payment from the buyer. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Seller must report \$15, or  $200 \times (\$40/\$540)$  in sales tax, and \$185, or  $200 \times (\$500/\$540)$  under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$29 sales tax credit is reduced to zero.

(h) The facts are the same as in (e) of this subsection, except that immediately after the sale, Seller assigns the contract to a finance company without recourse, receiving face value for the contract. The finance company may claim the retail sales tax credit or refund of \$29. The finance company

may not claim any deductions for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller.

(i) The facts are the same as in (h) of this subsection, except that the Seller receives less than face value for the contract. The result is the same as in (h) of this subsection for both parties. The finance company may claim a \$29 retail sales tax bad debt credit or refund, but may not claim a B&O bad debt deduction for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 06-01-005, § 458-20-196, filed 12/8/05, effective 1/8/06. Statutory Authority: RCW 82.32.300, 82.01.060(1), and 34.05.230. 05-04-048, § 458-20-196, filed 1/27/05, effective 2/27/05. Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-196, filed 3/15/83; Order ET 70-3, § 458-20-196 (Rule 196), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-198 Installment sales, method of reporting. (1) Introduction.** This rule explains the tax-reporting responsibilities of persons making installment sales of tangible personal property under the business and occupation (B&O), retail sales, and use taxes.

**(2) How is income from installment sales of tangible personal property reported?** The seller must report the full selling price of installment sales of tangible personal property in the tax-reporting period during which the sale is made. This is true even when the buyer pays the tax to the seller in installments over time.

**(a) Leases not taxable as installment sales.** A lease under WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) is not taxable as an installment sale.

**(b) Interest income.** Persons who receive interest or finance charges from an installment sale must pay B&O tax under the service and other business activities classification on receipt of these amounts. Retail sales and use taxes do not generally apply to these amounts. Refer to WAC 458-20-109 (Finance charges, carrying charges, interest, penalties) for further information.

**(c) Assignment of rights to receive payments.** A seller may sell or assign the right to receive payments on an installment sale to another business. The assignee should not report any sales or use taxes on such payments because the seller is responsible for remitting the full amount of sales tax. For information on how to report a buyer's default on an installment obligation, refer to WAC 458-20-196 (Bad debts).

[Statutory Authority: RCW 82.32.300, 82.01.060(1), and 34.05.230. 05-04-048, § 458-20-198, filed 1/27/05, effective 2/27/05. Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-198, filed 3/15/83; Order ET 70-3, § 458-20-198 (Rule 198), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-216 Successors, quitting business. (1) Introduction.** RCW 82.32.140 requires a taxpayer to remit any outstanding tax liability to the department of revenue (department) within ten days of quitting business. If this tax is not paid by the taxpayer, any successor to the taxpayer becomes liable for the outstanding tax. This rule explains under what circumstances a person is considered a successor to a person quitting business. It explains the successor's responsibility for payment of an outstanding tax liability owed by the taxpayer quitting business, whether that liability is known at the time of purchase or not. This rule also pro-



vides examples illustrating when successorship does or does not apply.

**(2) Who is a "successor"?**

**(a) "Successor" on or after July 1, 2003.**

(i) RCW 82.04.180 provides that a "successor" is:

(A) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (I) tangible assets or (II) intangible assets of the taxpayer;

(B) Any surviving corporation of a statutory merger; or

(C) Any person obligated to fulfill the terms of a contract as a surety or guarantor of a defaulting contractor, in which case the person is deemed a successor only to tax liability arising out of that contract.

(ii) A person, however, is not a "successor" if the person acquires more than fifty percent of the fair market value of the tangible or intangible assets of the taxpayer through insolvency proceedings, regular legal proceedings to enforce a lien, security interest, or judgment, or by repossession under a security agreement.

**(b) "Successor" prior to July 1, 2003.**

(i) For the periods prior to July 1, 2003, a "successor" is:

(A) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of business, a major part of the taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment, whether he or she operates the business or not. RCW 82.04.180. A person acquires a "major part" of the taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment if he or she acquired more than fifty percent of the fair market value of such property at the time of the sale or conveyance;

(B) Any person obligated to fulfill the terms of a contract as a surety or guarantor of a defaulting contractor, in which case the person is deemed a successor only to tax liability arising out of that contract.

(ii) A person, however, is not a "successor" if the person acquires a major part of a taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment through insolvency proceedings, regular legal proceedings to enforce a lien, security interest, or judgment, or by repossession under a security agreement.

**(c) Surviving corporation of statutory merger taken effect prior to July 1, 2003.** A surviving corporation of a statutory merger that takes effect prior to July 1, 2003, is liable for the full tax liability of the nonsurviving corporation, plus any interest or penalties due, under RCW 23B.11.060 or similar laws in other jurisdictions.

**(3) What are tangible and intangible assets for purposes of this rule?**

**(a) Tangible assets.** "Tangible assets" include, but are not limited to, materials, supplies, merchandise, inventory, equipment, or other tangible personal property.

**(b) Intangible assets.** "Intangible assets" include, but are not limited to, all moneys and credits including mortgages, notes, accounts, certificates of deposit; tax certificates; judgments; state, county and municipal bonds; bonds of the United States and of foreign countries; bonds, stocks, or

shares of private corporations; personal service contracts; trademarks; trade names; brand names; patents; copyrights; trade secrets; franchise agreements; licenses; permits; core deposits of financial institutions; non-compete agreements; business name; telephone numbers and internet addresses; customer or patient lists; favorable contracts and financing agreements; reputation; exceptional management; prestige; good name; integrity of a business; or other intangible personal property.

**(4) What are taxpayer's responsibilities for outstanding tax liability?** Whenever a taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the tangible or intangible assets of the business, any tax administered by the department and for which the taxpayer is liable is immediately due and payable. The taxpayer must, within ten days, complete a tax return and pay the tax due. RCW 82.32.140.

**(5) What are successor's responsibilities for taxpayer's outstanding tax liability?**

(a) Withholding tax or obtaining documentation that no tax is due from taxpayer. A successor must withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until the taxpayer produces either a statement of tax status from the department showing payment in full of any tax due or a certificate from the department that no tax is due. If the tax is not paid by the taxpayer within ten days from the date of sale, exchange, or disposal of the business, the successor will become liable for the payment of the full amount of tax. A successor as defined in RCW 82.04.180 is not liable for interest or penalties associated with the taxpayer's tax liability. RCW 82.32.140.

**(b) Payment of successor liability is payment against purchase price.** The payment of the taxpayer's tax liability by the successor is deemed a payment upon the purchase price. If the sum of the payment to the department plus any payments made, directly or indirectly, to the taxpayer is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the taxpayer. RCW 82.32.140.

**(c) Limitation on successor's responsibility for taxpayer's outstanding tax liability.** Effective July 1, 2003, if the fair market value of the assets acquired by a successor is less than fifty thousand dollars, the successor's liability for payment of the unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

**(6) Can a successor avoid responsibility for taxpayer's outstanding tax liability?**

**(a) What must a successor do to avoid responsibility for tax due by a taxpayer?** A successor is not liable for any tax due from the taxpayer if the successor provides written notice of the acquisition to the department and within six months of receiving the written notice, the department has not issued a tax assessment against the taxpayer and mailed a copy of a notice of tax due to the successor. RCW 82.32.140. The six-month period begins upon the department's receipt of the written notice, or the date the person becomes a successor, whichever is later.

If there are circumstances that prohibit an audit from being completed within six months of the department receiv-

ing a proper written notice, the successor and the department may execute a Liability of Successor Waiver Agreement (Form Rev 31 0068) to extend the time in which the department may issue a tax assessment, and the successor will remain liable for the taxes. In lieu of executing such agreement, the department may issue a protective assessment under RCW 82.32.100 if the records cannot be made available for examination in a timely manner.

(b) **How does a successor notify to the department of the acquisition of a taxpayer?** Written notice of the acquisition must be made on a form prescribed by the department, or it must contain substantially the same information. The written notice must be provided by mailing to the Department of Revenue, Attn: Successorship Notices, P.O. Box 47476, Olympia, Washington 98504-7476. The written notice is available on the department's internet web site at [www.dor.wa.gov](http://www.dor.wa.gov) under forms. The written notice must contain the following information:

- (i) The (predecessor) taxpayer's name, business name, address, and UBI number;
- (ii) The successor's name, business name, address, and UBI number;
- (iii) The date of the acquisition;
- (iv) Whether or not the successor acquired more than fifty percent of the tangible or intangible assets of the (predecessor) taxpayer;
- (v) A description of the assets acquired and their estimated fair market value;
- (vi) The total costs of acquisition; and
- (vii) How the person became a successor (i.e., asset purchase, merger, guarantor of a defaulting contractor, etc.).

(7) **Disclosure.** The department is not prohibited from disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded. RCW 82.32.-330. For example, a successor is liable under RCW 82.32.-140 for payment of an outstanding tax liability of the predecessor taxpayer. The department is only authorized to provide the successor return or tax information related to that outstanding tax liability.

(8) **Tax deferrals not terminated.** A tax deferral granted to a (predecessor) taxpayer may be transferred to the successor if the successor meets the eligibility requirements for the remaining periods of the deferral and the parties agree in writing that the successor will assume liability for the tax deferral. RCW 82.60.060, 82.63.045, 82.68.050 and 82.69.-050. If the deferral is transferred, the successor of the investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral. If the deferral is not transferred, the successor's liability for deferred tax is limited to the deferred taxes due at the time of the transfer. Refer to WAC 458-20-24001 and 458-20-24001A (Sales and use tax deferral—Manufacturing and research/development activities in distressed areas), 458-20-24002 (Sales and use tax deferral—New manufacturing and research/development facilities), and 458-20-24003 (Tax incentives for high technology businesses) for further reference regarding successors of deferral investment projects.

(9) **Examples.** The following factual situations illustrate the application of successorship. These factual situations should be used only as a general guide. The successorship status of each situation depends on all the facts and circumstances. Assume all the examples below occur on or after July 1, 2003.

(a) **Example 1.** Taxpayer quits business and sells all equipment and inventory to one purchaser. The taxpayer may be either solvent or insolvent at the time of sale. The purchaser is a successor.

(b) **Example 2.** Taxpayer quits business, selling all of its intangible assets consisting of customer lists and a covenant not to compete. The purchaser is a successor.

(c) **Example 3.** Taxpayer sells its entire business, including all equipment (60% of its tangible assets) to Purchaser A, and all inventory (40% of its tangible assets) to Purchaser B. Purchaser A is a successor. Purchaser B is not a successor.

(d) **Example 4.** Taxpayer sells its entire business, including all assets as follows to three purchasers on January 1, 2004:

PURCHASER A	PURCHASER B	PURCHASER C
Inventory of \$200,000	Equipment of \$100,000	Receivable of \$45,000

Purchaser A is a successor because it has acquired more than 50% of the fair market value, of the tangible assets of the taxpayer. Purchaser B is not a successor because it has acquired less than 50% of the fair market value of the tangible assets of the taxpayer. Purchaser C is a successor because it has acquired more than 50% of the intangible assets of the taxpayer. Purchaser C's tax liability is limited to \$45,000 because the fair market value of the assets acquired is less than \$50,000.

(i) On February 1, 2004, Purchaser C provides a proper written notice to the department regarding its purchase from the taxpayer. Purchaser A does not provide any written notice to the department regarding its purchase from the taxpayer. On September 30, 2004, the department issues a tax assessment to the taxpayer for \$100,000 in taxes owed, plus penalties and interest. A copy of the tax assessment is also mailed to Purchaser A as a successor to the taxpayer. Purchaser A is liable for the \$100,000 in taxes owed by the taxpayer since it did not provide a proper written notice to the department. Purchaser C is not liable for the \$100,000 in taxes because it provided a proper written notice, and the department did not issue an assessment within six months of receiving the notice.

(ii) Same facts as in the previous example except the department issues its tax assessment on July 15, 2004, and mails a copy of the tax assessment to both Purchasers A and C as successors. Both Purchasers A and C are liable as successors for the taxes owed by the taxpayer. However, Purchaser C's liability is limited to \$45,000 in taxes since the fair market value of the assets it acquired was less than \$50,000.

(e) **Example 5.** Taxpayer obtains a loan from a financial institution to purchase equipment and inventory. The financial institution secures the loan by taking a security interest in the equipment and inventory. Taxpayer quits business, leaving the equipment and inventory behind. The financial insti-

tution repossesses these items. The financial institution is not a successor.

(f) **Example 6.** Taxpayer purchases all equipment and inventory under a line of credit extended by a bank and guaranteed by a third party. The third party perfects a security interest in the equipment and inventory. Taxpayer quits business, surrendering the equipment and inventory to the third party guarantor. The third party guarantor is not a successor.

(g) **Example 7.** Taxpayer leaves business, including equipment, materials, and inventory, which the landlord holds for unpaid rent. The landlord forecloses the landlord's lien using the summary foreclosure provisions of RCW 60.10.030, or holds a foreclosure sale by the sheriff, or accepts a bill of sale in satisfaction of the landlord's lien for rent created by RCW 60.72.010. The landlord is not a successor.

(h) **Example 8.** Taxpayer purchases all equipment and inventory under a security agreement.

(i) If the property is repossessed by the vendor, the vendor is not a successor.

(ii) If the taxpayer sells his or her equity under the security agreement to a third person, the third person is a successor.

(iii) If the equipment and inventory is not repossessed and the vendor buys back the interest of the taxpayer without following the summary foreclosure provisions of RCW 60.10.030, the vendor is a successor.

(i) **Example 9.** Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors. The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets. A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement the purchaser assumes and agrees to pay taxes and/or lien claims.

(j) **Example 10.** Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-14-107, § 458-20-216, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 82.32.300. 99-08-034, § 458-20-216, filed 3/31/99, effective 5/1/99; Order ET 70-3, § 458-20-216 (Rule 216), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-228 Returns, payments, penalties, extensions, interest, stay of collection. (1) Introduction.** This section discusses the responsibility of taxpayers to pay their tax by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance.

Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and sections discussing important tax issues and changes. It's all friendly, free, and easy to access.

(b) **I can avoid some penalties and interest if I file my returns electronically (by e-file)?** It's true! Many common reporting errors are preventable when taxpayers take advantage of the department's electronic filing (e-file) system. E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes online. The e-file system helps taxpayers by performing all the math calculations and checking for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** Persons who wish to use e-file should access the department's internet site (<http://dor.wa.gov>) and open the page for electronic filing, which has additional links to pages answering frequently asked questions, and explaining the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

(c) **Index of subjects addressed in this section:**

Topic—Description	See subsection
<b>Where can I get my questions answered, or learn more about what I owe and how to report it? -</b> By phone or on-line, the department provides a number of free and easy resources to help you find answers. One of them is right for you.	(1)(a) of this section, (see above)
<b>I can avoid some penalties and interest if I file my returns electronically (by e-file)? -</b> It's true! E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this section, (see above)
<b>Do I need to file a return? -</b> How do I get returns and file them? Can I file my returns electronically?	(2) of this section
<b>What methods of payment can I use? -</b> What can I use to pay my taxes? Some taxpayers are required to pay electronically.	(3) of this section
<b>When is my tax payment due? -</b> Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this section

Topic—Description	See subsection
<b>Penalties</b> - What types of penalty exist? How big are they? When do they apply?	(5) of this section
<b>Statutory restrictions on imposing penalties</b> - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this section
<b>Interest</b> - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this section
<b>Application of payment towards liability</b> - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this section
<b>Waiver or cancellation of penalties</b> - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this section
<b>Waiver or cancellation of interest</b> - Interest will only be waived in two limited situations. What are they?	(10) of this section
<b>Stay of collection</b> - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(11) of this section
<b>Extensions</b> - Can I get an extension of my due date? How long does an extension last?	(12) of this section

(2) **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.090(8).

(a) Returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be made upon forms, through the electronic filing (e-file) system (see subsection (1)(b) of this section), or by other means, provided or accepted by the department. The department provides tax returns upon request or when a taxpayer opens an active tax reporting account. Tax returns are generally mailed to all registered taxpayers prior to the due date of the tax. However, it remains the responsibility of taxpayers to timely request a return if one is not received, or to otherwise insure that their return is filed in a timely manner. E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department on a "Consumer Use Tax Return." Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's toll free number 1-800-647-7706 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at <http://dor.wa.gov>, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply if use tax is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment can I use?** Payment may be made by cash, check, cashier's check, money order, and in certain cases by electronic funds transfers, or other electronic means approved by the department.

(a) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(b) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic funds transfers. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up the electronic funds transfer process. (See WAC 458-20-22802 on electronic funds transfers.)

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within twenty days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 82.32.080. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

Refer to WAC 458-20-22802 (Electronic funds transfer) for more information regarding the electronic funds transfer process, due dates, and requirements.

(c) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this section for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this section. (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this section for more information.)

The penalty types and rates addressed in this subsection are:

<b>Penalty Type—Description</b>	<b>Penalty Rate</b>	<b>See subsection</b>
<b>Late payment of a return</b> - Five percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	5/15/25%	(5)(a) of this section
<b>Unregistered taxpayer</b> - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this section
<b>Assessment</b> - Five percent added when a tax assessment is issued, and increases if the tax due remains unpaid.	5/15/25%	(5)(c) of this section
<b>Issuance of a warrant</b> - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this section
<b>Disregard of specific written instructions</b> - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this section

<b>Penalty Type—Description</b>	<b>Penalty Rate</b>	<b>See subsection</b>
<b>Evasion</b> - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this section
<b>Misuse of resale certificates</b> - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate but should not have.	50%	(5)(g) of this section
<b>Failure to remit sales tax to seller</b> - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this section
<b>Failure to obtain the contractor's unified business identifier (UBI) number</b> - A flat two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	\$250 max	(5)(i) of this section

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a taxpayer's return is not paid by the due date. A fifteen percent penalty is imposed if the tax due is not paid on or before the last day of the month following the due date, and a twenty-five percent penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) **Will I avoid the penalty if I file my return without the payment?** The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued will include an assessment penalty starting at five percent, which will increase the longer tax remains unpaid. See RCW 82.32.100 and (c) of this subsection. If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to

the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) **I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do?** You should fill out and send in a Master Application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) **Unregistered taxpayer.** RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register prior to being contacted by the department. "Voluntarily register" means to properly complete and submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, if a person properly completes and submits a master application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

(c) **Assessment.** If the department issues an assessment for unpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of fifteen percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within thirty days of the original or extended due date, the penalty will further increase to a total of twenty-five percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

The initial five percent assessment penalty is included with an assessment when it is issued. The penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, pre-existing credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty (plus ten percent increments at thirty and sixty days from issuance) is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(5).

(i) **What is "disregard of specific written instructions"?** A taxpayer is considered to have received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due,

a penalty of fifty percent of the additional tax found to be due will be added. RCW 82.32.090(6). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(g) **Misuse of resale certificates.** Any buyer who uses a resale certificate to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of a resale certificate, refer to WAC 458-20-102 (Resale certificates).

(h) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to

chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070(2).

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through (d) of this section) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(7).

(b) The department may impose either the evasion penalty (subsection (5)(f) of this section) or the penalty for disregarding specific written instructions (subsection (5)(e) of this section), but may not impose both penalties on the same tax. RCW 82.32.090(8). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(g) of this section) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest applies to taxes only. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described below in (e) of this subsection. RCW 82.32.050.

(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described below in (e) of this subsection, from the last day of the year in which the deficiency is incurred until the date of payment.

(c) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable

interest rates described below in (e) of this subsection. RCW 82.32.050.

**(d) How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2000. The assessment includes periods from January 1, 1997, through September 30, 1999.

(i) For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).

(ii) For calendar year 1998 tax, interest begins February 1, 1999, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iii) For the 1999 tax period ending with September 30, 1999, interest begins November 1, 1999, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iv) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

**(e) How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

**(f) How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

**(8) Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer. RCW 82.32.080.

In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Termination, dissolution, or abandonment of corporate business—Personal liability of person in control of collected sales tax funds), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand

dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

**(9) Waiver or cancellation of penalties.** RCW 82.32.-105 authorizes the department to waive or cancel penalties under limited circumstances.

**(a) Circumstances beyond the control of the taxpayer.**

The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the assessment penalty or the penalty for misuse of a resale certificate. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of resale certificates found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts



presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See (a)(iii)(E) of this subsection.

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are immediately available to download at no cost from the department's internet site, <http://dor.wa.gov>. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this section. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to unreceived paper returns. See subsection (1)(b) of this section.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this section;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

**(b) Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) of this section) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and (a) of this subsection) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.-105(2).

If a taxpayer has obtained a tax registration endorsement with the department and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of

return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's September 2003 return has had the original due date of October 20th extended to November 20th. The return and payment are received after the November 20th extended due date. A penalty waiver is requested. Since the delinquent return represented the month of September 2003, the twenty-four months which will be reviewed begin on September 1, 2001, and end with August 31, 2003, (the twenty-four months prior to September 2003). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(iv) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this section. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)(e) of this section.

(12) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-22-095, § 458-20-228, filed 11/1/05, effective 12/2/05. Statutory Authority: RCW 82.32.300. 01-05-022, § 458-20-228, filed 2/9/01, effective 3/12/01; 00-04-028, § 458-20-228, filed 1/24/00, effective 2/24/00; 92-03-025, § 458-20-228, filed 1/8/92, effective 2/8/92; 85-04-016 (Order 85-1), § 458-20-228, filed 1/29/85; 83-16-052 (Order ET 83-4), § 458-20-228, filed 8/1/83; Order ET 74-1, § 458-20-228, filed 5/7/74; Order ET 71-1, § 458-20-228, filed 7/22/72; Order ET 70-3, § 458-20-228, filed 5/29/70, effective 7/1/70.]

**WAC 458-20-261 Commute trip reduction incentives.** (1) **Introduction.** This rule explains the various commute trip reduction incentives that are available. First, RCW

82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or public utility tax credit, effective July 1, 2003, in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **B&O tax and public utility tax exemptions on providing commuter ride sharing or ride sharing for persons with special transportation needs.** Amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(a) **What is "commuter ride sharing"?** "Commuter ride sharing" means a car pool or van pool arrangement, whereby one or more fixed groups:

- (i) Not exceeding fifteen persons each, including the drivers; and
- (ii) Either:
  - (A) Not fewer than five persons, including the drivers; or
  - (B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding;

Are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions.

(b) **What is "ride sharing for persons with special transportation needs"?** "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.

(i) **What is a "private, nonprofit transportation provider"?** A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

(ii) **What is "persons with special transportation needs"?** "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation.

(3) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride-sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and

use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles.

(a) **What are the requirements?** The requirements are that the passenger motor vehicles must be used:

(i) For commuter ride sharing or ride sharing for persons with special transportation needs; and

(ii) As ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Additional requirements in certain cases.** Vehicles with five or six passengers, including the driver, used for commuter ride sharing must be operated within a county, or a city or town within that county, which has a commute trip reduction plan under chapter 70.94 RCW in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

Individual-employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commute ride-sharing arrangement conforms to a car pool/van pool element contained within their commute trip reduction program.

(4) **B&O tax or public utility tax credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** Effective July 1, 2003, RCW 82.70.020 provides a credit against B&O tax or public utility tax liability for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is "ride sharing"?** "Ride sharing" means a car pool or van pool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any

special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries.

(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries.

(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(f) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year.

(g) **What is a "fiscal year"?** A "fiscal year" begins at July 1st of one year and ends on June 30th of the following year.

(h) **When will the credit expire?** The credit program is scheduled to expire July 1, 2013.

(i) **What are the limitations of the credit?**

(i) **For periods after June 30, 2005:**

(A) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

(B) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

(C) A person may not take a credit for amounts claimed for credit by other persons.

(D) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. This limitation does not apply to credits deferred from prior fiscal years as described in (i)(i)(G) and (H) of this subsection.

(E) Total credit granted to all persons under both B&O tax and public utility tax may not exceed two million seven hundred fifty thousand dollars for a fiscal year, including any credits carried forward from prior fiscal years as described in (i)(i)(G) of this subsection.

(F) No credit or portion of a credit denied, because of exceeding the limitations in (i)(i)(D) or (E) of this subsection,

may be used against tax liability for other fiscal years, subject to (i)(i)(G) and (H) of this subsection.

(G) A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may use all or part of the credit deferred prior to July 1, 2005, for a period of not more than three fiscal years after the fiscal year in which the credit accrued. No credit deferred under this (i)(i)(G) may be used after June 30, 2008. The person must submit an application, as provided in (j)(i)(A) of this subsection, in the fiscal year tax credit will be applied, and the credit must be approved by the department before use. This application is subject to eligibility under (i)(i)(E) of this subsection for the fiscal year tax credit will be applied. If a deferred credit is subject to proportional reduction under (j)(i)(D) of this subsection, the amount of deferred credit reduced may be carried forward as long as the period of deferral does not exceed three years after the year the credit was earned.

(H) For deferred credit approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. The limitation described in (i)(i)(E) of this subsection does not apply to such deferred credit approved after June 30, 2005.

(I) No person is eligible for the tax credit, including the deferred tax credit authorized under (i)(i)(G) and (H) of this subsection, after June 30, 2013.

(J) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003) are terminated.

(ii) **For periods prior to July 1, 2005:**

(A) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

(B) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

(C) A person may not take a credit for amounts claimed for credit by other persons.

(D) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. This limitation does not apply to credits deferred from prior fiscal years as described in (i)(ii)(G) of this subsection.

(E) Total credit granted to all persons under both B&O tax and public utility tax may not exceed two million two hundred fifty thousand dollars for a fiscal year, including any credits carried forward from prior fiscal years as described in (i)(ii)(G) of this subsection.

(F) No credit or portion of a credit denied, because of exceeding the limitations in (i)(ii)(D) or (E) of this subsection, may be used against tax liability for other fiscal years, subject to (i)(ii)(G) of this subsection.

(G) A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may defer all or part of the credit for a period of not more than three fiscal years after the fiscal year in which the credit accrued. Such person deferring tax credit must submit an application in the fiscal year tax credit will be applied. This

application is subject to eligibility under (i)(ii)(E) of this subsection for the fiscal year tax credit will be applied.

(H) No person is eligible for the tax credit, including the deferred tax credit authorized under (i)(ii)(G) of this subsection, after June 30, 2013.

(I) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003) are terminated.

**(j) What are the credit procedures?**

**(i) For periods after June 30, 2005:**

(A) Persons applying for the credit must complete an application. The application must be received by the department between January 1 and January 31, following the calendar year in which the applicants made incentive payments. The application must be made to the department in a form and manner prescribed by the department.

(B) An application due by January 31, 2006, must not include incentive payments made from January 1, 2005, to June 30, 2005.

(C) The department must rule on an application within sixty days of the January 31 deadline. In addition, the department must disapprove an application not received by the January 31 deadline. Once the application is approved and tax credit is granted, the department is not allowed to increase the credit.

(D) If the total amount of credit applied for by all applicants in a fiscal year exceeds the limitation as provided in (i)(i)(E) of this subsection, the amount of credit allowed for all applicants is proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years, except as provided in (i)(i)(G) of this subsection.

**(ii) For periods prior to July 1, 2005:**

(A) Persons apply for the credit, by completing a commute trip reduction reporting schedule and filing it with the excise tax return covering the period for which the credit is claimed. The commute trip reduction reporting schedule is available upon request from the department of revenue.

(B) Credit must be claimed by the due date of the last tax return for the fiscal year in which the payment to or on behalf of employees was made.

(I) Credit not previously claimed may not be claimed for the first time on supplemental or amended tax returns filed after the due date of the last tax return for the fiscal year in which the payment to or on behalf of employees was made.

(II) If the department of revenue has granted an extension of the due date for the last tax return for the fiscal year in which the payment to or on behalf of employees was made, the credit must be claimed by the extended due date.

(C) Once the statewide limitation of two million two hundred fifty thousand dollars is reached in a fiscal year, no further credit will be available for that fiscal year. Credit is permitted by the department of revenue on a first-come-first-serve basis. Credit claimed after the statewide limitation is reached may be deferred to the next three fiscal years before the credit expires.

(k) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples

should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. These are the total expenditures during a fiscal year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit, if it does not cause the sixty-dollar limitation to be exceeded, because it is an amount paid on behalf of a specific employee.

(iv) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 06-01-026, § 458-20-261, filed 12/13/05, effective 1/13/06. Statutory Authority: RCW 82.32.300, 82.04.4453 and 82.16.048. 00-11-097, § 458-20-261, filed 5/17/00, effective 6/17/00; 99-08-035, § 458-20-261, filed 3/31/99, effective 5/1/99.]

**WAC 458-20-270 Telephone program excise tax rates.** RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

For the period July 1, 2005, through June 30, 2006, the monthly telephone program excise tax rates are as follows:

TRS	10 cents per switched access line
WTAP	14 cents per switched access line

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 43.20A.725, and 80.36.430. 05-18-017, § 458-20-270, filed 8/26/05, effective 9/26/05.]

## Chapter 458-29A WAC LEASEHOLD EXCISE TAX

### WAC

458-29A-400 Leasehold excise tax—Exemptions.

**WAC 458-29A-400 Leasehold excise tax—Exemptions.** (1) **Introduction.** This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(2) **Operating properties of a public utility.** All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

For example, tracks leased to a railroad company at the Port of Seaside are exempt from leasehold excise tax because the railroad is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(3) **Student housing at public and nonprofit schools and colleges.** All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

For example, the leasehold interest associated with a building used as a dormitory for Public University students is exempt from the leasehold excise tax.

(4) **Subsidized housing.** All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

For example, a leasehold interest in an apartment house that is subsidized by the United States Department of Housing and Urban Development is exempt from leasehold excise tax if the property is owned by the state of Washington and residents are subject to income qualification requirements.

(5) **Nonprofit fair associations.** All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

For example, a leasehold interest held by the Local Nonprofit Fair Association is considered exempt from leasehold excise tax. However, if buildings on the fairgrounds are

rented to private parties for storage during the winter, these rentals may be subject to the leasehold excise tax.

(6) **Public employee housing.** All leasehold interests in public property used as a residence by an employee of the public owner are exempt from leasehold excise tax if the employee is required to live on the public property as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(b) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(c) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(7) **Interests held by enrolled Indians.** Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax. For example, if an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery, the leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

**(8) Leases on Indian lands to non-Indians.** Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(b) and WAC 458-29A-200.

For example, Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

**(9) Annual taxable rent is less than two hundred fifty dollars.** Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same public lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(b) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(c) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(d) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

**(10) Leases for a continuous period of less than thirty days.** Leasehold interests that provide use and possession of public property for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the public lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

**(11) Month-to-month leases in residential units to be demolished or removed.** Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

For example, State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim

leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(12) **Public works contracts.** Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

For example, during construction of a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction, any leasehold interest in real or personal property created for Tinker solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(13) **Correctional industries in state adult correctional facilities.** Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

For example, a profit or nonprofit organization operating and managing a business within a state prison under an agreement between it and the department of corrections is exempt from leasehold excise tax for its use and possession of state property.

(14) **Camp facilities for disabled persons.** Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for disabled persons of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

For example, a county park with camping facilities leased to a nonprofit charitable organization is exempt from leasehold excise tax if the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(15) **Public or entertainment areas of certain baseball stadiums.** Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

"Public or entertainment areas" for the purposes of this exemption include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit

areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(16) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this exemption, the term "public and entertainment areas" has the same meaning as set forth in subsection (15) above.

(17) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(18) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(19) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. This exemption is effective July 28, 2000. RCW 82.29A.134.

(20) **Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. This exemption is effective January 1, 2002. RCW 82.29A.136.

(21) **Municipally owned historic sites.** All leasehold interests in property that is:

- (a) Owned by a municipal corporation;
- (b) Listed on any federal or state register of historical sites; and
- (c) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(22) **Amphitheaters.** All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county with a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand. For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales



areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

[Statutory Authority: RCW 82.29A.140. 05-23-092, § 458-29A-400, filed 11/16/05, effective 12/17/05; 02-18-036, § 458-29A-400, filed 8/26/02, effective 9/26/02; 99-20-053, § 458-29A-400, filed 10/1/99, effective 11/1/99.]

## Chapter 458-30 WAC

### OPEN SPACE TAXATION ACT RULES

#### WAC

458-30-262	Agricultural land valuation—Interest rate—Property tax component.
458-30-590	Rate of inflation—Publication—Interest rate—Calculation.

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year 2006, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 7.24 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.32	Lewis	1.11
Asotin	1.41	Lincoln	1.32
Benton	1.32	Mason	1.28
Chelan	1.33	Okanogan	1.15
Clallam	1.10	Pacific	1.41
Clark	1.31	Pend Oreille	1.21
Columbia	1.33	Pierce	1.39
Cowlitz	1.27	San Juan	0.70
Douglas	1.38	Skagit	1.20
Ferry	0.95	Skamania	0.98
Franklin	1.49	Snohomish	1.19
Garfield	1.61	Spokane	1.51
Grant	1.41	Stevens	1.12
Grays Harbor	1.43	Thurston	1.31
Island	0.91	Wahkiakum	1.05
Jefferson	1.09	Walla Walla	1.46
King	1.08	Whatcom	1.25
Kitsap	1.21	Whitman	1.58
Kittitas	1.04	Yakima	1.27
Klickitat	1.13		

[Statutory Authority: RCW 84.34.065 and 84.34.141. 05-24-028, § 458-30-262, filed 11/30/05, effective 1/1/06; 05-01-051, § 458-30-262, filed 12/7/04, effective 1/1/05; 03-24-013, § 458-30-262, filed 11/20/03, effective 12/21/03; 02-23-080, § 458-30-262, filed 11/19/02, effective 12/20/02; 02-03-040, § 458-30-262, filed 1/8/02, effective 2/8/02. Statutory Authority: RCW 84.34.065, 84.34.360. 00-24-105, § 458-30-262, filed 12/6/00, effective 1/1/01; 99-24-034, § 458-30-262, filed 11/23/99, effective 1/1/00. Statutory Authority: RCW 84.34.065, 84.34.360 and 84.08.010. 99-01-067, § 458-30-262, filed 12/14/98, effective 1/1/99. Statutory Authority: RCW 84.34.065, 84.34.141 and 84.08.010. 98-01-178, § 458-30-262, filed 12/23/97, effective 1/1/98. Statutory Authority: RCW 84.34.065, 84.34.141,

84.08.010 and 84.34.070. 97-02-066, § 458-30-262, filed 12/31/96, effective 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 96-01-095, § 458-30-262, filed 12/19/95, effective 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.08.070. 95-09-041, § 458-30-262, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065. 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.08.070. 93-07-067, § 458-30-262, filed 3/17/93, effective 4/17/93; 92-03-068, § 458-30-262, filed 1/14/92, effective 2/14/92; 91-04-001, § 458-30-262, filed 1/24/91, effective 2/24/91; 90-24-087, § 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-262, filed 1/2/90, effective 2/2/90.]

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.** (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department—Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) **Example.** A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54

[Statutory Authority: RCW 84.34.360 and 84.34.310. 05-24-119, § 458-30-590, filed 12/7/05, effective 1/1/06; 05-01-052, § 458-30-590, filed 12/7/04, effective 1/1/05; 03-24-076, § 458-30-590, filed 12/2/03, effective 1/2/04; 02-24-058, § 458-30-590, filed 12/3/02, effective 1/3/03; 02-03-041, § 458-30-590, filed 1/8/02, effective 2/8/02; 00-24-107, § 458-30-590, filed 12/6/00, effective 1/1/01; 99-24-035, § 458-30-590, filed 11/23/99, effective 12/24/99; 99-01-068, § 458-30-590, filed 12/14/98, effective 1/1/99; 98-01-179, § 458-30-590, filed 12/23/97, effective 1/1/98; 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

## Chapter 458-40 WAC

### TAXATION OF FOREST LAND AND TIMBER

#### WAC

458-40-540	Forest land values—2006.
458-40-610	Timber excise tax—Definitions.
458-40-660	Timber excise tax—Stumpage value tables—Stumpage value adjustments.
458-40-680	Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions.

**WAC 458-40-540 Forest land values—2006.** The forest land values, per acre, for each grade of forest land for the 2006 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	2006 VALUES ROUNDED
1	1	\$ 200
	2	198
	3	187
	4	136
2	1	169
	2	164
	3	157
	4	113

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LAND GRADE	OPERABILITY CLASS	2006 VALUES ROUNDED
3	1	133
	2	129
	3	128
	4	97
4	1	101
	2	98
	3	97
	4	75
5	1	74
	2	67
	3	66
	4	45
6	1	37
	2	34
	3	34
	4	32
7	1	17
	2	17
	3	16
	4	16
8		1

[Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.140. 06-02-006, § 458-40-540, filed 12/22/05, effective 1/1/06; 05-02-037, § 458-40-540, filed 12/30/04, effective 1/1/05. Statutory Authority: RCW 82.32.300 and 84.33.140. 04-02-018, § 458-40-540, filed 12/30/03, effective 1/1/04. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. 03-02-004, § 458-40-540, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. 02-02-033, § 458-40-540, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.120. 01-02-018, § 458-40-540, filed 12/21/00, effective 1/1/01; 00-02-018, § 458-40-540, filed 12/27/99, effective 1/1/00; 99-02-030, § 458-40-540, filed 12/30/98, effective 1/1/99; 98-02-014, § 458-40-540, filed 12/30/97, effective 1/1/98; 97-07-041, § 458-40-540, filed 3/14/97, effective 4/14/97; 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

**WAC 458-40-610 Timber excise tax—Definitions. (1) Introduction.** The purpose of WAC 458-40-610 through 458-40-690 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-690. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (13) of this section.

(8) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, hauling distance zone, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(9) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(10) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting the timber from the land and delivering it to the buyer. The term includes the costs of slash disposal required to abate extreme fire hazard. Harvesting and marketing costs do not include the costs of reforestation, permanent road construction, or any other costs not directly and exclusively associated with the harvesting and marketing of the timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, the

deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

(11) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

(12) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(13) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

- (a) Minimum gross diameter—two inches.
- (b) Minimum gross length—twelve feet.
- (c) Minimum volume—ten board feet net scale.
- (d) Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

(14) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(15) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(16) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(17) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(18) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(19) **Private timber.** All timber harvested from privately owned lands.

(20) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(21) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(22) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(23) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year.

(24) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of

species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs harvested in stumpage value areas 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed twenty feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value areas 6 and 7, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles (Designation: D 25)* of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

(25) **Stumpage.** Timber, having commercial value, as it exists before logging.

(26) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(27) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(28) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within twenty-four months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than twenty-four months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(29) **Thinning.** Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, 5, or 10:

(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and

(b) The harvester leaves a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 84.33.096. 06-02-007, § 458-40-610, filed 12/22/05, effective 1/22/06; 05-08-070, § 458-40-610, filed 3/31/05, effective 5/1/05. Statutory Authority: RCW 82.32.300 and 84.33.096. 02-21-005, § 458-40-610, filed 10/3/02, effective 11/3/02; 00-24-068, § 458-40-610, filed 12/1/00, effective 1/1/01. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 96-02-054, § 458-40-610, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330 and 84.33.096. 95-18-026, § 458-40-610, filed 8/25/95, effective 8/25/95. Statutory Authority: RCW 84.33.096 and 82.32.300. 90-14-033, § 458-40-610, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-610, filed 12/31/86.]

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

**(2) Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from January 1 through June 30, 2006:

**TABLE 1—Stumpage Value Table  
Stumpage Value Area 1  
January 1 through June 30, 2006**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$480	\$473	\$466	\$459	\$452
		2	462	455	448	441	434
		3	424	417	410	403	396
		4	371	364	357	350	343
Western Redcedar <sup>(2)</sup>	RC	1	597	590	583	576	569
Western Hemlock <sup>(3)</sup>	WH	1	342	335	328	321	314
		2	278	271	264	257	250
		3	278	271	264	257	250
		4	278	271	264	257	250
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood <sup>(4)</sup>	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks <sup>(5)</sup>	RCS	1	174	167	160	153	146
RC & Other Posts <sup>(6)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(7)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(7)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(4) Stumpage value per ton.

(5) Stumpage value per cord.

(6) Stumpage value per 8 lineal feet or portion thereof.

(7) Stumpage value per lineal foot.

**TABLE 2—Stumpage Value Table  
Stumpage Value Area 2  
January 1 through June 30, 2006**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
		1	2	3	4	5	
Douglas-Fir	DF	1	\$543	\$536	\$529	\$522	\$515
		2	514	507	500	493	486
		3	474	467	460	453	446
		4	440	433	426	419	412
Western Redcedar <sup>(2)</sup>	RC	1	597	590	583	576	569
Western Hemlock <sup>(3)</sup>	WH	1	384	377	370	363	356
		2	362	355	348	341	334
		3	333	326	319	312	305
		4	326	319	312	305	298
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood <sup>(4)</sup>	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks <sup>(5)</sup>	RCS	1	174	167	160	153	146
RC & Other Posts <sup>(6)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(7)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(7)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(4) Stumpage value per ton.

(5) Stumpage value per cord.

(6) Stumpage value per 8 lineal feet or portion thereof.

(7) Stumpage value per lineal foot.

**TABLE 3—Stumpage Value Table  
Stumpage Value Area 3  
January 1 through June 30, 2006**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
		1	2	3	4	5	
Douglas-Fir <sup>(2)</sup>	DF	1	\$486	\$479	\$472	\$465	\$458
		2	428	421	414	407	400
		3	428	421	414	407	400
		4	340	333	326	319	312
Western Redcedar <sup>(3)</sup>	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer <sup>(4)</sup>	WH	1	384	377	370	363	356
		2	259	252	245	238	231
		3	259	252	245	238	231
		4	259	252	245	238	231
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12

**TABLE 3—Stumpage Value Table**  
**Stumpage Value Area 3**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood <sup>(5)</sup>	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	174	167	160	153	146
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes Alaska-Cedar.

(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(5) Stumpage value per ton.

(6) Stumpage value per cord.

(7) Stumpage value per 8 lineal feet or portion thereof.

(8) Stumpage value per lineal foot.

**TABLE 4—Stumpage Value Table**  
**Stumpage Value Area 4**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$543	\$536	\$529	\$522	\$515
		2	485	478	471	464	457
		3	482	475	468	461	454
		4	426	419	412	405	398
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar <sup>(3)</sup>	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer <sup>(4)</sup>	WH	1	384	377	370	363	356
		2	319	312	305	298	291
		3	313	306	299	292	285
		4	313	306	299	292	285
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood <sup>(5)</sup>	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	174	167	160	153	146
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45

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**TABLE 4—Stumpage Value Table**  
**Stumpage Value Area 4**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes Alaska-Cedar.

(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(5) Stumpage value per ton.

(6) Stumpage value per cord.

(7) Stumpage value per 8 lineal feet or portion thereof.

(8) Stumpage value per lineal foot.

**TABLE 5—Stumpage Value Table**  
**Stumpage Value Area 5**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$602	\$595	\$588	\$581	\$574
		2	511	504	497	490	483
		3	489	482	475	468	461
		4	426	419	412	405	398
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar <sup>(3)</sup>	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer <sup>(4)</sup>	WH	1	394	387	380	373	366
		2	330	323	316	309	302
		3	330	323	316	309	302
		4	330	323	316	309	302
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood <sup>(5)</sup>	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	174	167	160	153	146
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes Alaska-Cedar.

(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir,

Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

- (5) Stumpage value per ton.  
 (6) Stumpage value per cord.  
 (7) Stumpage value per 8 lineal feet or portion thereof.  
 (8) Stumpage value per lineal foot.

**TABLE 6—Stumpage Value Table**  
**Stumpage Value Area 6**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>								
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number					
			1	2	3	4	5	
Douglas-Fir <sup>(2)</sup>	DF	1	\$358	\$351	\$344	\$337	\$330	
Lodgepole Pine	LP	1	250	243	236	229	222	
Ponderosa Pine	PP	1	387	380	373	366	359	
		2	212	205	198	191	184	
Western Redcedar <sup>(3)</sup>	RC	1	496	489	482	475	468	
True Firs and Spruce <sup>(4)</sup>	WH	1	262	255	248	241	234	
Western White Pine	WP	1	336	329	322	315	308	
Hardwoods	OH	1	50	43	36	29	22	
Western Redcedar Poles	RCL	1	496	489	482	475	468	
Small Logs <sup>(5)</sup>	SML	1	34	33	32	31	30	
Chipwood <sup>(5)</sup>	CHW	1	1	1	1	1	1	
RC Shake & Shingle Blocks <sup>(6)</sup>	RCF	1	76	69	62	55	48	
LP & Other Posts <sup>(7)</sup>	LPP	1	0.35	0.35	0.35	0.35	0.35	
Pine Christmas Trees <sup>(8)</sup>	PX	1	0.25	0.25	0.25	0.25	0.25	
Other Christmas Trees <sup>(9)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25	

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
 (2) Includes Western Larch.  
 (3) Includes Alaska-Cedar.  
 (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."  
 (5) Stumpage value per ton.  
 (6) Stumpage value per cord.  
 (7) Stumpage value per 8 lineal feet or portion thereof.  
 (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.  
 (9) Stumpage value per lineal foot.

**TABLE 7—Stumpage Value Table**  
**Stumpage Value Area 7**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>								
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number					
			1	2	3	4	5	
Douglas-Fir <sup>(2)</sup>	DF	1	\$358	\$351	\$344	\$337	\$330	
Lodgepole Pine	LP	1	250	243	236	229	222	
Ponderosa Pine	PP	1	387	380	373	366	359	
		2	212	205	198	191	184	
Western Redcedar <sup>(3)</sup>	RC	1	496	489	482	475	468	
True Firs and Spruce <sup>(4)</sup>	WH	1	262	255	248	241	234	
Western White Pine	WP	1	336	329	322	315	308	

**TABLE 7—Stumpage Value Table**  
**Stumpage Value Area 7**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>								
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number					
			1	2	3	4	5	
Hardwoods	OH	1	50	43	36	29	22	
Western Redcedar Poles	RCL	1	496	489	482	475	468	
Small Logs <sup>(5)</sup>	SML	1	26	25	24	23	22	
Chipwood <sup>(5)</sup>	CHW	1	1	1	1	1	1	
RC Shake & Shingle Blocks <sup>(6)</sup>	RCF	1	76	69	62	55	48	
LP & Other Posts <sup>(7)</sup>	LPP	1	0.35	0.35	0.35	0.35	0.35	
Pine Christmas Trees <sup>(8)</sup>	PX	1	0.25	0.25	0.25	0.25	0.25	
Other Christmas Trees <sup>(9)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25	

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
 (2) Includes Western Larch.  
 (3) Includes Alaska-Cedar.  
 (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."  
 (5) Stumpage value per ton.  
 (6) Stumpage value per cord.  
 (7) Stumpage value per 8 lineal feet or portion thereof.  
 (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.  
 (9) Stumpage value per lineal foot.

**TABLE 8—Stumpage Value Table**  
**Stumpage Value Area 10**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>								
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number					
			1	2	3	4	5	
Douglas-Fir <sup>(2)</sup>	DF	1	\$529	\$522	\$515	\$508	\$501	
		2	471	464	457	450	443	
		3	468	461	454	447	440	
		4	412	405	398	391	384	
Lodgepole Pine	LP	1	250	243	236	229	222	
Ponderosa Pine	PP	1	387	380	373	366	359	
		2	212	205	198	191	184	
Western Redcedar <sup>(3)</sup>	RC	1	583	576	569	562	555	
Western Hemlock and Other Conifer <sup>(4)</sup>	WH	1	370	363	356	349	342	
		2	305	298	291	284	277	
		3	299	292	285	278	271	
		4	299	292	285	278	271	
Red Alder	RA	1	376	369	362	355	348	
		2	311	304	297	290	283	
Black Cottonwood	BC	1	26	19	12	5	1	
Other Hardwood	OH	1	164	157	150	143	136	
Douglas-Fir Poles	DFL	1	639	632	625	618	611	
Western Redcedar Poles	RCL	1	1179	1172	1165	1158	1151	
Chipwood <sup>(5)</sup>	CHW	1	1	1	1	1	1	
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	174	167	160	153	146	

**TABLE 8—Stumpage Value Table**  
**Stumpage Value Area 10**  
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale <sup>(1)</sup>							
Species Name	Species Code	Timber Quality Code Number	Hauling				
			Distance Zone Number				
		1	2	3	4	5	
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes Alaska-Cedar.

(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(5) Stumpage value per ton.

(6) Stumpage value per cord.

(7) Stumpage value per 8 lineal feet or portion thereof.

(8) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, 2006:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 10**  
 January 1 through June 30, 2006

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$30.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table**  
**Stumpage Value Areas 6 and 7**  
 January 1 through June 30, 2006

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 3 thousand board feet to 8 thousand board feet per acre.	- \$7.00
Class 3	Harvest of less than 3 thousand board feet per acre.	- \$10.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$20.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$30.00



Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
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Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
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Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

III. Remote island adjustment:		
For timber harvested from a remote island		- \$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. 06-02-005, § 458-40-660, filed 12/22/05, effective 1/1/06; 05-14-087, § 458-40-660, filed 6/30/05, effective 7/1/05; 05-02-040, § 458-40-660, filed 12/30/04, effective 1/1/05; 04-14-033, § 458-40-660, filed 6/29/04, effective 7/1/04; 04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; 03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140.

03-02-004, § 458-40-660, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. 02-14-019, § 458-40-660, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. 02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. 01-13-105, § 458-40-660, filed 6/20/01, effective 7/1/01; 01-02-020, § 458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. 00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. 00-14-011, § 458-40-660, filed 6/27/00, effective 7/1/00; 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; 98-14-083, § 458-40-660, filed 6/28/98, effective 7/1/98; 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

### **WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions.**

(1) **Introduction.** The acceptable log scaling and grading standard for stumpage value areas 1, 2, 3, 4, 5, and 10 is the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group. The acceptable log scaling standard for stumpage value areas 6 and 7 is the Scribner Decimal C log rule described in the most current edition of the "Eastside Log Scaling Handbook" as published by the Northwest Log Rules Advisory Group, except that timber harvested in stumpage value areas 6 and 7 must be scaled using the current regional taper rules at the point of origin.

(2) **Special services scaling.** Special services scaling as described in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group may not be used for tax reporting purposes without prior written approval of the department of revenue.

(3) **Sample scaling.** Sample scaling may not be used for tax reporting purposes without prior written approval of the department of revenue. To be approved, sample scaling must be in accordance with the following guidelines:

(a) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(b) The sample must be taken in such a manner to assure random, unbiased sample selection in accordance with accepted statistical tests of sampling.

(c) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(d) Sample frequency must be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(e) Harvesters, or a purchaser with an approved sample scaling method, must maintain sufficient supporting documentation to allow the department of revenue to verify source data, and test statistical reliability of sample scale systems.

(f) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

(4) **Conversions to Scribner Decimal C Scale.** The following definitions, tables, and conversion factors must be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods other than those listed are not to be used for tax reporting purposes without prior written approval of the department of revenue. Harvesters who wish to use a method of conversion other than those listed below must obtain written approval from the department of revenue before harvesting. Purchasers may obtain written approval of a sample scaling method from the department of revenue. The department will maintain a list of purchasers with an approved sample scaling method. A harvester may obtain this list and a summary of the approved method for specific purchasers from the department of revenue. If a harvester has not obtained approval of a sample scaling method before harvesting, the harvester may use a purchaser's approved sample scaling method. If the harvester, or purchaser, fails to use an approved sample scaling method or other method of conversion approved by these rules to set the purchase price, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold.

(a) **Weight measurement.** If the sole unit of measure used to set the purchase price for logs from harvest units that meet the definition of the lowest quality code for each species was weight, and the harvester does not use an approved method of sample scaling to determine volume for the stumpage value tables, the following tables must be used for converting to Scribner Decimal C. If weight is the sole measure used for a harvest unit with quality codes other than the lowest, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, 5, & 10) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)				
Species	Quality code			
	1	2	3	4
Douglas-fir <sup>1</sup>	NA	NA	NA	7.50
Western Hemlock <sup>2</sup>	NA	NA	NA	8.25
Western Redcedar <sup>3</sup>	7.0			
Red Alder <sup>4</sup>	NA	7.8		
Chipwood	9.0			

<sup>1</sup> Includes Douglas-fir, Western Larch, and Sitka Spruce.

<sup>2</sup> Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

<sup>3</sup> Includes Alaska-cedar.

<sup>4</sup> Maple, Black Cottonwood and other hardwoods.

(Stumpage Value Areas 6 & 7) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)		
Species	Quality code	
	1	2
Ponderosa Pine	NA	6.50
Douglas-fir <sup>1</sup>	5.50	
Lodgepole Pine	6.0	
Western Hemlock <sup>2</sup>	5.50	
Englemann Spruce	4.50	
Western Redcedar <sup>3</sup>	4.50	
Chipwood	9.0	
Small Logs	6.50	

<sup>1</sup> Includes Western Larch.

<sup>2</sup> Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

<sup>3</sup> Includes Alaska-cedar.

(b) **Cord measurement.** For the purposes of converting cords into Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and 10 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 330 board feet per cord.

(ii) In stumpage value areas 6 and 7 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 390 board feet per cord.

(iii) A cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord.

(iv) Firewood must be converted at a rate of 3 tons per cord.

(c) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and 10 multiply the lumber tally for the individual species by 75%, and round to the nearest one thousand board feet (MBF); or

(ii) In stumpage value areas 6 and 7 multiply the lumber tally for the individual species by 88%, and round to the nearest one thousand board feet (MBF).

(d) **Log scale conversion.** Timber harvested in stumpage value areas 1, 2, 3, 4, 5, and 10 and which has been scaled by methods and procedures published in the "Eastside Log Scaling Handbook" must have the volumes reported reduced by eighteen percent. Timber harvested in stumpage value areas 6 and 7 and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest log rules advisory group, must have the volumes reported increased by eighteen percent.

(e) **Timber pole and piling volume tables.** Harvesters of poles must use the following tables to determine the Scribner board foot volume for each pole length and class:

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, 5, and 10																
Length	Pole Class <sup>1</sup>														Piling Class <sup>2</sup>	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A B
20							50	50	40	40	30	30	20	20	20	80 70
25							60	60	50	50	40	40	30	30	30	100 90
30							110	70	60	60	50	50	40	40		130 110
35					160	160	130	100	80	80	60	60	50			130 110
40			240	200	180	180	150	120	120	90	70	60				150 120
45	380	340	340	280	230	230	190	150	120	120	90	90				150 120
50	430	370	370	300	260	260	210	160	140	140	100					160 140
55	470	410	410	330	280	280	230	180	150	150						180 150
60	540	470	470	410	340	340	290	220	190	190						190 160
65	610	520	520	420	380	380	320	260	210	210						210 180
70	650	560	560	480	400	400	350	270	230	230						230 190
75	700	600	600	520	520	520	440	290	250							230 200
80	820	700	700	600	600	600	540	440	360	290						250 210
85	910	800	800	660	660	660	570	490	360							260 210
90	1080	930	930	820	820	690	590	490	400							260 220
95	1170	1000	1000	870	870	750	640	540								290 240
100	1190	1030	1030	900	900	760	660	550								310 250
105	1310	1160	1160	1000	1000	860	740	610								330 270
110	1370	1220	1220	1050	1050	910	780	650								380 300
115	1440	1280	1280	1100	1100	960	860	680								400 310
120	1660	1460	1460	1300	1300	1140	970	820								500 400
125	1840	1600	1600	1410	1410	1250	1080	930								
130	1920	1680	1680	1490	1490	1310	1120	970								

<sup>1</sup> Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

<sup>2</sup> Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

Total Scribner Board Foot Volume Stumpage Value Areas 6 and 7																
Length	Pole Class <sup>1</sup>														Piling Class <sup>2</sup>	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A B
20							70	60	50	50	30	30	20	20	20	90 70
25							80	70	50	50	40	40	30	30	20	100 80
30							110	90	60	60	50	50	50	40		130 110
35					190	160	140	100	100	70	60	60	50			140 100
40				240	240	200	170	120	110	100	70	70				140 100
45	390	330	330	270	270	220	180	150	110	110	80	70				150 110
50	460	390	390	340	340	280	240	190	150	150	120					190 150
55	510	430	430	370	360	300	250	190	150	150						190 150
60	610	530	530	440	440	380	310	240	200	200						240 200
65	650	570	570	490	480	410	350	280	220	220						240 200
70	750	650	650	550	470	470	410	320	260	260						260 210
75	810	700	700	600	600	500	440	340	270							270 220
80	960	830	830	710	710	610	510	420	340							220 220
85	1020	870	870	760	760	640	550	450	360							300 240
90	1110	970	970	840	840	720	620	500	420							280 280
95	1160	1010	1010	870	870	740	640	510								360 280
100	1380	1210	1210	1060	1060	910	780	650								360 280
105	1430	1250	1250	1100	1100	940	820	690								400 300
110	1580	1390	1390	1220	1220	1070	920	770								460 340
115	1660	1470	1470	1280	1280	970	810	680								470 360
120	1880	1680	1680	1480	1480	1290	1130	950								560 450
125	1910	1690	1690	1490	1490	1140	970	810								
130	2170	1920	1920	1710	1710	1510	1320	1140								

<sup>1</sup> Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

<sup>2</sup> Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 84.33.096. 06-02-007, § 458-40-680, filed 12/22/05, effective 1/22/06; 05-08-070, § 458-40-680, filed 3/31/05, effective 5/1/05; 03-22-099, § 458-40-680, filed 11/5/03, effective 12/6/03. Statutory Authority: RCW 82.32.300 and 84.33.096. 00-24-068, § 458-40-680, filed 12/1/00, effective 1/1/01. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.120. 96-02-056, § 458-40-680, filed 12/29/95, effective 1/29/96. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-084, § 458-40-680, filed 6/30/95, effective 7/31/95. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-680, filed 12/31/86.]

**Chapter 458-61A WAC**  
**REAL ESTATE EXCISE TAX**

**WAC**

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**WAC 458-61A-100 Real estate excise tax—Overview.** (1) **Introduction.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in the state of Washington. All sales of real property in this state are subject to the real estate excise tax unless specifically exempted by chapter 82.45 RCW and these rules. The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This chapter provides applicable definitions, describes procedures for payment, collection, and reporting of the tax, explains when penalties and interest are imposed on late payment, describes those transactions exempted from imposition of the tax, and explains the procedures for refunds and appeals.

**(2) Imposition of tax.**

(a) The taxes imposed are due at the time the sale occurs, are the obligation of the seller, and, in most instances, are collected by the county upon presentation of the documents of sale for recording in the public records.

(b) If there is a sale of the controlling interest in an entity that owns real property in this state, the tax is paid to the

department at the time the interest is transferred. See WAC 458-61A-101.

(3) **Rate of tax.** The rate of the tax is set forth in RCW 82.45.060. Counties, cities, and towns may impose additional taxes on sales of real property on the same incidences, collection, and reporting methods authorized under chapter 82.45 RCW. See chapter 82.46 RCW.

(4) **Nonprofit organizations.** Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, because of the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

(5) **Sales in Indian country.** A sale of real property located in Indian country by an enrolled tribe or tribal member is not subject to real estate excise tax. See WAC 458-20-192 for complete information regarding the taxability of transactions involving Indians and Indian country.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-100, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-101 Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state.** (1) **Introduction.** The transfer of a controlling interest in an entity that has an interest in real property in this state is considered a taxable sale of the entity's real property for purposes of the real estate excise tax under chapter 82.45 RCW. This rule explains the application of the tax on those transfers.

(2) **Definitions.** For the purposes of this chapter, the following definitions apply unless the context requires otherwise.

(a) **"Controlling interest"** means:

(i) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(ii) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

**Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(A) Able and Baker each own 40% of the voting shares of a corporation, Flyaway, Inc. Charlie, Delta, Echo, and Frank each own 5% voting shares. Charlie acquires Baker's 40% interest, and Delta's and Echo's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Charlie (40% from Baker plus 5% from Delta and 5% from Echo). However, if Charlie, Delta, and Echo were to transfer their shares (totaling 15%) to Able, those transfers would not be taxable. Although Able would own 55% of the corporation, only a 15% interest was transferred and acquired, so the acquisition by Able is not taxable.

(B) Melody LLC consists of a general partner and three limited partners, each possessing a 25% interest. Even though

the general partner controls the management and daily operations, a 25% interest is not a controlling interest. If someone were to acquire a 50% or greater interest from any of the existing partners, there would be a taxable acquisition of a controlling interest. If one partner acquires an additional 25% interest from another partner for a total of a 50% interest, no transfer or acquisition of a controlling interest occurs because less than 50% is transferred and acquired.

(C) Anne, Bobby, Chelsea, and David each own 25% of the voting shares of a corporation. The corporation redeems the shares of Bobby, Chelsea, and David. Anne now owns all the outstanding shares of the corporation. A taxable transfer occurred when the corporation redeemed the shares of Bobby, Chelsea, and David.

(D) Andrew owns 75% of the voting shares of a corporation. Andrew transfers all of his stock by 25% portions of the shares in three separate and unrelated transactions to Betsy, Carolyn, and Daniel, who are not acting in concert. A taxable transfer of a controlling interest occurs when Andrew transfers 75% of the voting shares of the corporation, even though no one has subsequently acquired a controlling interest.

(E) Big Corporation has two stockholders, Adrian and Britain. Adrian owns 90 shares of stock (90%) and Britain owns 10 shares of stock (10%). Big Corporation owns 60% of the stock of Little Corporation, which owns real property. Adrian, by virtue of owning 90% of Big Corporation's stock, has a 54% interest in Little Corporation (90% interest in Big multiplied by the 60% interest Big has in Little equals the 54% interest Adrian has in Little). Adrian sells his 90 shares of stock in Big to Britain. Adrian, by selling his 90 shares of Big stock, has transferred a controlling interest (54%) in an entity that owns real property (Little). This transfer is subject to the real estate excise tax.

(F) Assume the same facts as in Example (E) of this subsection, except that Big owns only 50% of Little's stock. Since Adrian has not transferred and Britain has not acquired a controlling interest in Little ( $90\% \times 50\% = 45\%$ ), the real estate excise tax does not apply. If, however, Big had transferred its 50% interest in Little, that would be a transfer of a controlling interest and it would be subject to the real estate excise tax.

(b) The terms "**person**" or "**company**" mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state of Washington or any political subdivision thereof, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any agency or instrumentality thereof.

(c) "**True and fair value**" means market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.

(d) "**Twelve-month period**" is any period of twelve consecutive months and may span two calendar years.

(e) "**Acting in concert**" occurs:

(i) When one or more persons have a relationship with each other such that one person influences or controls the

actions of another through common ownership. For example, if a parent corporation and a wholly owned subsidiary each purchase a 25% interest in an entity, the two corporations have acted in concert and acquired a controlling (i.e., at least 50%) interest in the entity.

(ii) Where buyers are not commonly controlled or owned, but the unity of purpose with which they have negotiated and will complete the acquisition of ownership interests, indicates that they are acting together. For example, three separate individuals who decide together to acquire control of a company jointly through separate purchases of 20% interests in the company act in concert when they acquire the interests.

(3) **In general.** In order for the tax to apply when the controlling interest in an entity that owns real property is transferred, the following must have occurred:

(a) The transfer or acquisition of the controlling interest occurred within a twelve-month period;

(b) The controlling interest was transferred in a single transaction or series of transactions by a single person or acquired by a single person or a group of persons acting in concert;

(c) The entity has an interest in real property located in this state;

(d) The transfer is not otherwise exempt under chapters 82.45 RCW and 458-61A WAC; and

(e) The transfer was made for valuable consideration.

(4) **Measure of the tax.** The measure of the tax is the "selling price." For the purpose of this rule, "selling price" means the true and fair value of the real property owned by the entity at the time the controlling interest is transferred.

(a) If the true and fair value of the property cannot reasonably be determined, one of the following methods may be used to determine the true and fair value:

(i) A fair market value appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

(b) If the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale will be used as the selling price.

(c) **Examples.**

(i) A partnership owns real property and consists of two partners, Amy and Beth. Each has a 50% partnership interest. The true and fair value of the real property owned by the partnership is \$100,000. Amy transfers her 50% interest in the partnership to Beth for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the partnership, or \$100,000.

(ii) A corporation consists of two shareholders, Chris and Dilbert. The assets of the corporation include real property, tangible personal property, and other intangible assets (goodwill, cash, licenses, etc.). An appraisal of the corporation's assets determines that the values of the assets are as follows: \$250,000 for real property; \$130,000 for tangible personal property; and \$55,000 for miscellaneous intangible assets. Chris transfers his 50% interest to Ellie for valuable consideration. The taxable selling price is the true and fair

value of the real property owned by the corporation, or \$250,000.

(iii) An LLC owns real property and consists of two members, Frances and George. Each has a 50% LLC interest. Frances transfers her 50% interest to George. In exchange for the transfer, George pays Frances \$100,000. The true and fair value of the real property owned by the LLC is unknown. There is no debt on the real property. A fair market value appraisal is not available. The market value assessment for the property maintained on the county property tax rolls is \$275,000. The taxable selling price is the market value assessment, or \$275,000.

(5) **Persons acting in concert.** The tax applies to acquisitions made by persons acting in concert, as defined in subsection (2)(f) of this section.

(a) Where persons are not commonly controlled or influenced, factors that indicate whether persons are acting in concert include:

(i) A close relation in time of the transfers or acquisitions;

(ii) A small number of purchasers;

(iii) Mutual terms contained in the contracts of sale; and

(iv) Additional agreements to the sales contract that bind the purchasers to a course of action with respect to the transfer or acquisition.

(b) If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the persons are not acting in concert, and the acquisitions will be considered separate acquisitions.

(c) **Example.** Able owns 100% of Emerald Corporation, which owns real property. As a group, Baker, Charlie, Delta, and Echo negotiate to acquire all of Able's interest in Emerald. Baker, Charlie, Delta, and Echo each acquire 25% of Able's interest. The contracts of Baker, Charlie, Delta, and Echo are identical and the purchases occur simultaneously. Baker, Charlie, Delta, and Echo also negotiated an agreement binding themselves to a course of action with respect to the acquisition of Emerald and the terms of the shareholders agreement that will govern their relationship as owners of Emerald. Baker, Charlie, Delta, and Echo are acting in concert and their acquisitions from Able are treated as a single acquisition of a controlling interest that is subject to the real estate excise tax.

(6) **Date of sale.**

(a) When the controlling interest is acquired in one transaction, the actual date control is transferred is the date of sale. Examples of when an interest in an entity is transferred include when payment is received by the seller and the shares of stock are delivered to the buyer, or when payment is received by the seller and partnership documents are signed, etc. However, if the parties enter into an agreement to acquire or transfer a controlling interest over time through a series of transactions, the date of sale is deemed the date of the agreement arranging the transactions. The agreement results in the transfer of both a present interest and a beneficial interest in the entity, the sum of which results in a controlling interest, regardless of whether the first of the successive transactions is more than twelve months prior to the final transaction.

(b) **Examples.**

(i) Andrew owns 100% of the voting shares of Topaz Corporation. Andrew signs a binding agreement to transfer

51% of his shares in the corporation to Ted. The agreement states that the transfer will occur as follows: 49% of the shares will be transferred on January 1st, and the remaining 2% of the shares will be transferred on February 1st of the following year. Andrew has contractually agreed to sell 51% of the voting shares in Topaz within a twelve-month period, even though the shares will not actually be transferred to Ted until later. The date of sale is the date of the agreement, and REET is due upon the true and fair value of the property as of the date of the agreement.

(ii) Matt acquires a 10% interest in an entity which owns an apartment building under construction worth \$500,000 from Simon on January 30th. On July 30th Matt acquires a 30% interest in the same entity from Mary, but the building is now worth \$900,000. On September 30th Matt acquires a 10% interest in the same entity from Ruth, but the building is now worth \$1,000,000. These are three separate and completely independent transfers. The final transfer allowed Matt to acquire, within twelve months, a controlling interest in an entity that owns real property. September 30th is the date of sale.

To determine the sellers' proportional tax liability in the example above, the series of transactions is viewed as a whole. Note both the individual and the total interests transferred. Here, Simon and Mary each conveyed 10% interests, while Ruth conveyed a 30% interest, with a total of a 50% interest being conveyed. To determine the liability percentage for each seller, divide the interest each conveyed by the total interest conveyed (Here, Simon and Mary:  $10/50 = 20\%$ ; Ruth:  $30/50 = 60\%$ ). This results in tax liability percentages here for Simon and Mary of 20% each and for Ruth, 60%.

To determine the amount of tax owed, the percentage is applied to the value of the property at the time of conveyance. In the example above, the value of the property to which the percentage applies is dependent on the time of each transfer (i.e., Simon's 20% on the \$500,000; Mary's 60% on the \$900,000; Ruth's 20% on the \$1,000,000).

(7) **Tax liability.** When there is a transfer or acquisition of a controlling interest in an entity that has an interest in real property, the seller of the interest is generally liable for the tax.

(a) When the seller has not paid the tax by the due date and neither the buyer nor the seller has notified the department of the sale within thirty days of the sale, the buyer is also liable for the tax.

(b) When the buyer has notified the department of the sale within thirty days of the sale, the buyer will not be held personally liable for any tax due.

(8) **Reporting requirements.** The transfer of a controlling interest in real property must be reported to the department when no instrument is recorded in the official real property records of the county in which the property is located. If the transfer is not taxable due to an exemption, that exemption should be stated on the affidavit.

(a) The sale must be reported by the seller to the department within five days from the date of the sale on the department of revenue affidavit form, DOR Form 84-0001B. The affidavit form must be signed by both the seller and the buyer, or their agent, and must be accompanied by payment of the tax due.

(b) The affidavit form may also be used to disclose the sale, in which case:

(i) It must be signed by the person making the disclosure; and

(ii) It must be accompanied by payment of the tax due only when submitted by a seller reporting a taxable sale.

(c) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is subject to penalty of perjury.

(d) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity must be reported to the department. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) Simon and Peter each own 40% of the voting shares of a corporation. Paul, Matthew, Mark, and John each own 5% voting shares. Paul acquires Peter's 40% interest, and Matthew's and Mark's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Paul (40% from Peter plus 5% from Matthew and 5% from Mark). This transaction must be reported.

(ii) Assume same facts as in example (d)(i) of this subsection. Paul's attorney advises him that for his protection, Paul should file an affidavit to disclose the sale. Paul files an affidavit to disclose the sale to the department within thirty days of the date of sale. Peter, Matthew, and Mark go on vacation and the affidavit and required tax payment is not sent to the department. The department notifies Peter, Matthew, and Mark of their tax liability, which now includes interest and penalties. Due to Paul's disclosure, Paul is relieved of any personal liability for the tax, interest, or penalties.

(iii) Assume the same facts as in example (d)(i) of this subsection, except Paul only acquires Peter's 40% interest and Matthew's 5% interest. This is not a taxable acquisition because a controlling interest (50% or more) was not acquired by Paul. This transaction does not need to be reported.

(9) **Due date, interest and penalties.** The tax imposed is due and payable immediately on the date of sale. See WAC 458-61A-306 for interest and penalties that may apply.

(10) **Transfers after tax has been paid.** When there is a transfer or acquisition of a controlling interest in an entity and the real estate excise tax is paid on the transfer, and there is a subsequent acquisition of an additional interest in the same entity within the same twelve-month period by a person acting in concert with the previous buyer(s), the subsequent seller is liable for its proportional portion of the tax. After payment by the subsequent seller of its proportional share, the person(s) who previously paid the tax may apply to the department for a refund of the amount overpaid because of the new proportional amount paid as a result of the subsequent transfer or acquisition.

(11) **Exemptions.** Because transfer and acquisition of a controlling interest in an entity that owns real estate in this state is statutorily defined as a "sale" of the real property owned by the entity, the exemptions of chapter 82.45 RCW and this chapter also apply to the sale of a controlling interest.

### Examples.

(a) The merger of a wholly owned subsidiary owning real property located in this state with another subsidiary wholly owned by the same parent is a transfer of a controlling interest. However, this transfer may be exempt from taxation on two grounds. First, it may be exempt because it is a mere change in form or identity (see WAC 458-61A-211). Second, it may be exempt if it qualifies under the nonrecognition of gain or loss provisions of the Internal Revenue Code for entity formation, liquidation and dissolution, and reorganization. (See WAC 458-61A-212.)

(b) Taki owns 100% of a corporation. Taki wants her child, Mieko, and corporate manager, Sage, to be co-owners with her in the corporation. Taki makes a gift of 50% of the voting stock to Mieko and sells 33 1/3% to Sage. Although a controlling interest in the corporation has been transferred to and acquired by Mieko, it is not taxed because a gift is an exempt transfer and not considered for purposes of determining whether a controlling interest has transferred. The sale of the 33 1/3% interest to Sage is not a controlling interest, and is not taxed.

(c) Richard owns 75% of the voting stock of a corporation that owns real estate located in this state. Richard pledges all of his corporate stock to secure a loan with a bank. When Richard defaults on the loan and the bank forecloses on Richard's stock in the corporation, the transfer and acquisition of the controlling interest of the entity is not a taxable transaction because foreclosures of mortgages and other security devices are exempt transfers. (See WAC 458-61A-208.)

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-101, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-102 Definitions.** For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) **"Affidavit"** means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) **"Consideration"** means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home for \$250,000. He puts down \$50,000, and finances the balance of \$200,000. The full consideration paid for the house is \$250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of part-

nerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at \$300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of \$175,000. Ben gives Liza \$125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on \$300,000, which is the total consideration for the sale.

(c) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. For example, Mel buys residential property for \$300,000. The title is encumbered by a lien for unpaid property taxes in the amount of \$12,000, and a lien for municipal sidewalk improvements in the amount of \$6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of \$300,000.

(3) "**Controlling interest**" means:

(a) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(4) "**County**" means the county treasurer or its agent.

(5) "**Date of sale**" means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

(6) "**Department**" means the department of revenue.

(7) "**Floating home**" means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

(8) "**Governmental entity**" means the United States, any agency or instrumentality of the United States, the state of Washington ("state"), any government agency, commission, college, university, or other department of the state, any political subdivision of the state, counties, any county agency, council, instrumentality, commission, office, or

department, any Washington taxing district, municipal corporations of this state, and any office, council, department, or instrumentality of a Washington municipal corporation.

(9) "**Mining property**" is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

(10) "**Mobile home**" means a mobile home as defined by RCW 46.04.302.

(11) "**Mortgage**" has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

(12) "**Park model trailer**" means a park model trailer as defined in RCW 46.04.622.

(13) "**Real estate**" or "**real property**" means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

(14) "**Real estate contract**" or "**contract**" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The term does not include earnest money agreements or options to purchase real property.

(15) "**Sale**" means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each suc-



cessive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a security interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show the affidavit number of the sale for which the deed is fulfilling.

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

(16) **"Seller"** means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether

mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

(17) **"Selling price"** means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-102, filed 11/16/05, effective 12/17/05.]

### **WAC 458-61A-103 Transfers involving an underlying debt. (1) Introduction.**

The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt. The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.

For example, Yen transfers property to Lee that is subject to an underlying debt. Yen is personally liable for the debt, meaning that if Yen does not make the payments the lender may foreclose on the property and obtain a judgment against Yen if the value of the property is insufficient to pay the debt. Lee agrees to make all future payments on Yen's debt but gives no other consideration for the property. Yen owes real estate excise tax on the amount of the underlying debt. Lee's payments on the underlying debt relieve Yen of her debt obligation. Therefore, Yen receives consideration.

**(2) Transfers where grantor has no personal liability for the underlying debt.** Real estate excise tax does not apply to transfers of real property subject to an underlying debt when the grantor has no personal liability for the debt and receives no other consideration for the transfer.

For example, Yen purchases property with funds obtained from PSP Corporation and secured only by the property. Yen has no personal liability for this debt. If Yen fails to make payments on the debt, PSP may foreclose on the property but it may not obtain a judgment against Yen. Yen

transfers the property to Lee subject to the underlying debt. Lee takes the property subject to the underlying debt, and does not give any other consideration for the property. If Lee fails to make payments, PSP may foreclose on the property but it may not obtain a judgment against Lee (who, like Yen before, has no personal liability for the debt). Because Yen is not personally liable for the debt, Lee's payments on the underlying debt to PSP do not relieve Yen of any liability for the debt. The real estate excise tax does not apply to this transfer because there is no consideration.

(3) **Documentation.** In order to avoid the incidence of the tax, the grantor must present and maintain proper documentation to verify the type of debt and to confirm that fact that the grantor is not personally liable for the debt.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-103, filed 11/16/05, effective 12/17/05.]

#### **WAC 458-61A-104 Assignments. (1) Purchasers.**

(a) The real estate excise tax does not apply to an assignment of a purchaser's interest in an earnest money agreement if neither the earnest money agreement nor its assignment results in a change of title to or ownership of the real property.

(b) The real estate excise tax does apply to transfers when the purchaser of real property under a real estate contract assigns the purchaser's interest in the contract for consideration. The tax is based on all consideration paid or contracted to be paid to the grantor for the assignment, including any unpaid principal balance due on the assigned real estate contract.

(2) **Sellers.** The real estate excise tax does not apply when a seller of real property under a real estate contract assigns any interest in the contract to a third party.

(3) **Documentation.** The real estate excise tax affidavit is not required for exempt assignments; however, the instrument of assignment must be stamped by the county treasurer as required by WAC 458-61A-301. The stamp will cross-reference the number of the affidavit relating to the contract being assigned.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-104, filed 11/16/05, effective 12/17/05.]

#### **WAC 458-61A-105 Mobile and floating home sales.**

(1) **Mobile homes.** The transfer of a mobile home is subject to either real estate excise tax or sales/use tax, depending on the characteristics of the transfer, regardless of whether the mobile home is classified as real or personal property on the assessment rolls.

(2) **Application of real estate excise tax.** The real estate excise tax applies to the transfer of a mobile home that:

(a) Is affixed to land by a foundation (post or blocks) and has connections for utilities;

(b) Is not required to be removed from the land as a condition of sale; and

(c) Has been subject to retail sales or use tax during a previous sale.

(3) **Sales or use tax.** Mobile home sales are subject to retail sales or use tax in the following instances:

(a) The initial retail sale of the mobile home;

(b) The sale from a dealer's lot of either a new or used mobile home;

(c) If the removal of the mobile from the land is a condition of the sale; or

(d) The mobile home is not affixed to the land by a foundation and does not have connections for utilities.

(4) **Floating homes.** The real estate excise tax applies to the transfer of a floating home that is:

(a) Constructed on a float used in whole or in part for human habitation as a single-family dwelling;

(b) Not designed for self-propulsion by mechanical means or for propulsion by means of wind; and

(c) Listed on the real property tax rolls of the county in which it is located and in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-105, filed 11/16/05, effective 12/17/05.]

#### **WAC 458-61A-106 Sales of improvements to land, leases, and leases with option. (1) Introduction.**

(a) The sale of improvements constructed on real property is subject to the real estate excise tax if the contract of sale does not require that the improvements be removed at the time of sale.

(b) The transfer of a lessee's interest in a leasehold for valuable consideration is taxable to the extent the transfer includes any improvement constructed on leased land. If the selling price of an improvement is not separately stated, or cannot otherwise be reasonably determined, the assessed value of the improvement as entered on the assessment rolls of the county assessor will be used.

(2) **Lease with option to purchase.** The real estate excise tax applies to a lease with option to purchase at the time the purchase option is exercised and the property is transferred. The measure of the tax is the true and fair value of the property conveyed at the time the option is exercised.

(3) **Improvements removed from land.** The real estate excise tax does not apply to the sale of improvements if the terms of the sales contract require that the improvements be removed from the land. In this case the improvements are considered personal property and their use by the purchaser is subject to the use tax under chapter 82.12 RCW.

(4) **Documentation.** Completion of the affidavit is required for all of the above transfers except a transfer described in subsection (3) of this section, in which case the purchaser must file a use tax return with the department.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-106, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-107 Option to purchase. (1) Introduction.** The real estate excise tax applies to a conveyance of real property upon the exercise of an option to purchase.

(2) **Taxability of sales of options.** The real estate excise tax does not apply to the grant or sale of an option and the real estate excise tax affidavit is not required for that transaction. However, the sale of an option is subject to business and occupation tax under the service and other category and should be reported on the combined excise tax return. RCW 82.04.290.

#### **(3) Examples.**

(a) Joe acquires an option at a cost of \$100,000. The option, if exercised, allows Joe to purchase ten parcels of land for \$700,000. As individual parcels, these lots of land are

uneconomical to develop. Joe "packages" the land, making it economically feasible to develop by either obtaining sufficient acreage or required studies. Buildup, a real estate development and construction company, purchases Joe's option on the property for \$2.3 million and subsequently exercises the option, paying \$700,000 for the land. The real estate excise tax does not apply to the sale of the option, however the \$2.3 million received for the option is subject to the business and occupation tax under the service and other category. The measure of the real estate excise tax is the \$700,000 purchase price paid on the transfer of the land.

(b) Consider the same initial facts as in the example in (a) of this subsection, but instead, Joe exercises the option, and subsequently sells the land to Buildup. The real estate excise tax applies to both the transfer to Joe and the subsequent transfer from Joe to Buildup.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-107, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-108 Contractor.** (1) **In general.** If land is deeded to a contractor with an agreement to reconvey the property after construction of an improvement, the real estate excise tax does not apply to either the first conveyance or to the reconveyance if:

(a) The land is deeded for the sole purpose of enabling the contractor to obtain financing for the construction of the improvement on the property conveyed; and

(b) The agreement to reconvey is contained in a written statement made prior to the original conveyance.

(2) **Tax treatment.** When both of the requirements of subsection (1) of this section have been met, the deed to the contractor, although absolute on its face, will be treated as creating a security interest only. However, the sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(3) **Documentation.** Real estate excise tax affidavits are required for both the original conveyance and the reconveyance. The affidavit must contain wording to the effect that the purpose of the transfers is for construction and security purposes only. The affidavit for reconveyance must refer to the date and number of the original affidavit.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Jill owns an unimproved lot. She contracts with Sapphire Construction to build a residence on her lot. The contract provides that the lot will be deeded to Sapphire to obtain financing. The contract also states the property will be deeded back to Jill when the residence is completed. No real estate excise tax is due on the transfer of the vacant lot from Jill to Sapphire. Six months later, the residence is completed. Sapphire Construction transfers the property (land plus improvement) to Jill. No real estate excise tax is due on this transfer. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(b) Eleanor owns a house on 20 acres. She contracts with Ruby Development to sell 19 of her acres, but keeps owner-

ship of her house and one acre that it sits on. The price is \$20,000 per acre. Since the property is not subdivided, she must convey all of her property to Ruby Development, under the condition that the house and the one acre will be deeded back to her when the property is subdivided. Eleanor transfers the 20-acre parcel to Ruby Development. Real estate excise tax is due on the \$380,000 contract price (19 acres x \$20,000 per acre). After one year, Ruby Development has the property subdivided into 20 one-acre parcels. Ruby Development transfers to Eleanor the house and one acre per the original contract. No real estate excise tax is due on the transfer from Ruby Development to Eleanor.

(c) Next to Eleanor, Bob owns 25 acres. He contracts with Ruby Development to sell his 25 acres for \$400,000, with the agreement that two lots will be transferred back to him after the development is completed. Real estate excise tax is due on the \$400,000 contract price. The reconveyance of two lots back to Bob is not subject to real estate excise tax.

(5) If a contractor, acting under the terms of a contract, purchases land on behalf of a customer for the purposes of constructing an improvement, the later conveyance of the property to the customer is not subject to the real estate excise tax provided the requirements of WAC 458-61A-214 (Nominee) are met. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(6) When the owner of a lot contracts to have an improvement built upon the lot and retains title to the land, or when a lessee contracts to have an improvement built upon the lot and retains the leasehold interest, the real estate excise tax does not apply to the purchase of the improvement. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(7) When a speculative builder owns a lot and builds an improvement upon it, the subsequent sale of land and improvement is subject to the real estate excise tax. When a speculative builder sells a parcel of property with a partially constructed improvement with the understanding that the builder will complete the improvement, the real estate excise tax applies to the percentage of the project complete at the time of transfer. The retail sales tax applies to that portion of the selling price representing the construction to be completed after transfer.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-108, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-109 Trading/exchanging property and boundary line adjustments.** (1) **Trading/exchanging property.** The real estate excise tax applies when real property is conveyed in exchange for other real property or any other valuable property. The real estate excise tax is due on the true and fair value for each individual property.

(2) **Boundary line adjustments.**

(a) **Introduction.** A boundary line adjustment is a legal method to make minor changes to existing property lines between two or more contiguous parcels. Real estate excise tax may apply depending upon the specific circumstances of the transaction. Boundary line adjustments include, but are not limited to, the following:

(i) Moving a property line to follow an existing fence line;

(ii) Moving a property line around a structure to meet required setbacks;

(iii) Moving a property line to remedy a boundary line dispute;

(iv) Moving a property line to adjust property size and/or shape for owner convenience; and

(v) Selling a small section of property to an adjacent property owner.

**(b) Boundary line adjustments in settlement of dispute.** Boundary line adjustments made solely to settle a boundary line dispute are not subject to real estate excise tax if no other consideration is present.

**(c) Taxable boundary line adjustments.** In all cases, real estate excise tax applies to boundary line adjustments if there is consideration (other than resolution of the dispute), such as in the case of a sale or trade of property.

**(3) Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Mr. Jehnsen and Mr. Smith own adjoining parcels of land separated by a fence. During a survey to confirm the property boundary of Mr. Smith's parcel, the parties discover that the true property line actually extends five feet over on Mr. Jehnsen's side of the fence. Mr. Jehnsen does not want to move the fence. He has paved, landscaped and maintained this section of land and if he gave it up he would lose his parking area. After numerous discussions regarding the property line, Mr. Smith agrees to quitclaim the five-foot section of land to Mr. Jehnsen. Real estate excise tax does not apply since there is no consideration other than resolution of the dispute.

(b) Mr. Smith will only agree to transfer the five-foot section of land to Mr. Jehnsen if he is paid \$1,000. Mr. Smith owes real estate excise tax on \$1,000.

(c) Mr. Smith will cede the five-foot parcel only if Mr. Jehnsen gives him a narrow strip of land in exchange. Mr. Jehnsen agrees to exchange a ten-foot section of his parcel for the five-foot section of Mr. Smith's parcel solely to resolve the boundary line dispute. Real estate excise tax does not apply. It is irrelevant that the property involved in the transfer is not equal since the sole purpose of the transfer is to settle a boundary line dispute.

(d) Mr. Smith and Mr. Jehnsen are unable to resolve their dispute over the five-foot parcel. Mr. Jehnsen agrees to trade his lake front cabin for Mr. Smith's entire parcel. Mr. Jehnsen will owe real estate excise tax on the fair market value of the lake front cabin. Mr. Smith owes real estate excise tax on the fair market value of his parcel.

(e) Mr. Smith wants something in exchange for giving the five-foot parcel to Mr. Jehnsen. Mr. Jehnsen agrees to give Mr. Smith his tractor in exchange for the five-foot section of land. Mr. Smith will owe real estate excise tax on the fair market value of the five-foot section of his parcel and use tax on the value of the tractor (see WAC 458-20-178).

(f) Mr. Robbins owns 18 acres of land adjacent to Ms. Pemberton's 22-acre parcel. Mr. Robbins would like to develop his 18 acres, but he needs two more acres to develop

the land. Ms. Pemberton agrees to give Mr. Robbins two acres of land. In exchange Mr. Robbins agrees to pave Ms. Pemberton's driveway as part of the land development. The real estate excise tax is due on the true and fair value of the two acres conveyed to Mr. Robbins. In addition, sales or use tax may be due on the value of the paving.

**(4) Documentation.** In all cases, an affidavit is required to record the new property line.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-109, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-110 Relocation service—Two-deed process.** **(1) Introduction.** The real estate excise tax applies to property transfers involving the two-deed process or delivery of a deed, blank as to the grantee, but otherwise complete.

**(2) Delivery to third party.** The subsequent delivery of the deed to a third person named as grantee for consideration is also a taxable sale.

**(3) Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Bob lists his house with a realtor under an agreement that if the house does not sell within four months, the realtor will purchase the house from Bob at the agreed price. Bob intends to purchase a house listed with that realtor and needs the funds from the sale of his house to use as a payment for the new house. Bob's house does not sell within the four-month period so the realtor purchases Bob's house. Bob executes a blank deed and gives it to the realtor, authorizing the realtor to insert the grantee's name when the realtor eventually resells the house. Real estate excise tax is due on both transfers. Bob owes real estate excise tax on the selling price of the house at the time he transfers the house to the realtor. The realtor owes real estate excise tax on the selling price of the house upon sale to the final buyer.

(b) PSP Corporation contracts with a relocation company to handle the sale of homes for its employees that are relocating. The employee transfers the property to the relocation company. The relocation company delivers the deed to an escrow company who holds the deed until the relocation company finds a buyer. Real estate excise tax is due on both transfers. Tax is due when the employee transfers the deed to the relocation company. Real estate excise tax is due on the second transfer when the relocation company transfers the property to the buyer.

**(4) Transactions involving only a single deed.** In the event the transactions are accomplished by one deed, the county may require documentation confirming the date of sale of each transaction. The documentation may include a copy of the relocation contract, copy of the settlement statement(s), etc. Even though there is only one deed, two taxable transactions have occurred, and real estate excise tax is due on both.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-110, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-111 Easements, development rights, water rights, and air rights.** **(1) Easements.** The real estate excise tax applies to the conveyance of an easement for the

use of real property in return for valuable consideration. The real estate excise tax affidavit is required only if the transfer is taxable.

**(2) Development rights, water rights, and air rights.**

(a) The real estate excise tax applies to the sale of development rights, water rights, and air rights. The measure of the tax is the total consideration received in exchange for the transfer of the right. The real estate excise tax affidavit must be completed for the transfer of development rights, water rights, and air rights regardless of whether a taxable sale has occurred.

(b) **"Development rights"** means transferable rights to the unused development on a parcel of land measured by the difference between the existing development density on the parcel and the density allowed by applicable zoning laws.

(c) **"Water rights"** means transferable rights to the diversion, extraction or use of water arising by virtue of the ownership of land located contiguous to surface water, a water right claim, or the possession of a water right permit or certificate issued by the department of ecology.

(d) **"Air rights"** means the exclusive undisturbed use and control of a designated air space within the perimeter of a stated land area and within stated elevations.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-111, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-112 Mineral rights and mining claims.** (1) **When tax is imposed.** A conditional sale of mining property in which the grantee has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee/grantee has the right to terminate the lease and option at any time, is taxable at the time of execution on the amount of the consideration paid to the grantor/lessor for execution of the contract. The tax due on any additional consideration paid by the grantee and received by the grantor is paid to the county upon the first occurrence of the following events:

(a) The time of termination;

(b) The time that all of the consideration due to the grantor has been paid and the transaction is completed except for the delivery of the deed to the grantee; or

(c) The time when the grantee unequivocally exercises an option to purchase the property.

(2) **Lease for royalty.** A mining lease that grants the lessee the right to conduct mining exploration upon or under the surface of real property and to remove minerals from the property in exchange for a royalty is not subject to the real estate excise tax when the lease does not transfer ownership of the minerals to the lessee prior to severance from the real property.

(3) **Patented claims.** Patented mining claims are real property and their sale is subject to the real estate excise tax.

(4) **Unpatented claims.** Unpatented mining claims are intangible personal property and therefore not subject to the real estate excise tax.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-112, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-113 Timber, standing.** (1) The real estate excise tax applies to the sale of timber if the ownership of the timber is transferred while the timber is standing. The

tax applies to the sale of standing timber whether the sale is accomplished by deed or by contract. See also chapters 84.33 RCW and 458-40 WAC for specific regulations and rules regarding the taxation of timber and forest land.

(2) The grantor's irrevocable agreement to sell timber and pass ownership to it as it is cut is a taxable transaction if the total amount of the sale is specified in the original contract.

(3) A contract to transfer the ownership of timber after it has been cut and removed from land by the grantee is not a taxable transaction.

(4) A contract between a timber owner and a harvester when the harvester provides the service of cutting the timber and transporting it to the mill is not subject to the real estate excise tax if the timber owner retains ownership of the timber until it is delivered to and purchased by the mill.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-113, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-200 Exemptions and exclusions.**

**Introduction.** There are limited exemptions or exclusions from the real estate excise tax provided by law. WAC 458-61A-201 through 458-61A-217 discuss exemptions and the procedures that must be followed to qualify for an exemption.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-200, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-201 Gifts.** (1) **Introduction.** Generally, a gift of real property is not a sale, and is not subject to the real estate excise tax. A gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property. If consideration is given in return for the interest granted, then the transfer is not a gift, but a sale, and it is subject to the real estate excise tax to the extent of the consideration received.

(2) **Consideration.** See WAC 458-61A-102 for the definition of "consideration." Consideration may also include:

(a) Monetary payments from the grantee to the grantor; or

(b) Monetary payments from the grantee toward underlying debt (such as a mortgage) on the property that was transferred, whether the payments are made toward existing or refinanced debt.

(3) **Assumption of debt.** If the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from tax. Real estate excise tax is due on the amount of debt assumed, in addition to any other form of payment made by the grantee to the grantor in return for the transfer. However, equity in the property can be gifted.

(4) **Rebuttable presumption regarding refinancing transactions.**

(a) There is a rebuttable presumption that the transfer is a sale and not a gift if the grantee is involved in a refinance of debt on the property within six months of the time of the transfer.

(b) There is a rebuttable presumption that the transfer is a gift and not a sale if the grantee is involved in a refinance of debt on the property more than six months from the time of the transfer.

**(5) Documentation.**

(a) A completed real estate excise tax affidavit is required for transfers by gift. A supplemental statement approved by the department must be completed and attached to the affidavit. The supplemental statement will attest to the existence or absence of underlying debt on the property, whether the grantee has or will in the future make any payments on the debt, and whether a refinance of debt has occurred or is planned to occur. The statement must be signed by both the grantor and the grantee.

(b) The grantor must retain financial records providing proof that grantor is entitled to this exemption in case of audit by the department. Failure to provide records upon request will result in subsequent denial of the exemption.

**(6) Examples.**

(a) **Overview.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

**(b) Examples—No debt.**

(i) John conveys his residence valued at \$200,000 to Sara. John comes off of the title. There is no underlying debt on the property, and Sara gives John no consideration for the transfer. The conveyance from John to Sara qualifies for the gift exemption from real estate excise tax.

(ii) Keith and Jean, as joint owners, convey their residence valued at \$200,000 to Jean as her sole property. There is no underlying debt on the property. In exchange for Keith's one-half interest in the property, Jean gives Keith \$10,000. Keith has made a gift of \$90,000 in equity, and received consideration of \$10,000. Real estate excise tax is due on the \$10,000.

**(c) Examples—Existing debt.**

(i) Josh conveys his residence valued at \$200,000 to Samantha. Josh has \$25,000 in equity and an underlying debt of \$175,000. Josh continues to make the mortgage payments out of his own funds, and Samantha does not contribute any payments toward the debt. Since Josh continues to make the payments, there is no consideration from Samantha to Josh, and the transfer qualifies for exemption as a gift.

(ii) Josh conveys the residence to Samantha, and after the transfer, Samantha begins to make payments on the debt. Josh does not contribute to the payments on the debt after the title is transferred. Josh has made a gift of his \$25,000 equity, but real estate excise tax is due on the \$175,000 debt that Samantha is now paying.

(iii) Dan conveys his residence valued at \$200,000 to himself and Jill as tenants in common. Dan has \$25,000 in equity and an underlying debt of \$175,000. Dan and Jill open a new joint bank account, to which they both contribute funds equally. Mortgage payments are made from their joint account. There is a rebuttable presumption that real estate excise tax is due on the conveyance because Jill appears to be contributing toward payments on the debt. In that case, real estate excise tax is due on the consideration given by Jill, (50% of the underlying debt) based upon her contributions to the joint account. The tax will be calculated on a one-half interest in the existing debt (\$87,500).

(iv) Dan conveys the residence to himself and Jill. Dan has \$25,000 in equity, and a mortgage of \$175,000. Dan and Jill open a new joint bank account, which is used to make the mortgage payments, but Dan contributes 100% of the funds to the account. The conveyance is exempt from real estate excise tax, because Jill has not given any consideration in exchange for the transfer.

(v) Bob conveys his residence valued at \$200,000 to himself and Jane as tenants in common. Bob has \$25,000 equity, and an underlying debt of \$175,000. Bob and Jane have contributed varying amounts to an existing joint bank account for many years prior to the conveyance. Mortgage payments have been made from the joint account both before and after the transfer. The conveyance is exempt from real estate excise tax, because Jane's contributions toward the joint account from which the payments are made is not deemed consideration in exchange for the transfer from Bob (because she made contributions for many years before the transfer as well as after the transfer, there is no evidence that her payments were consideration for the transfer).

(vi) Bill and Melanie, as joint owners, convey their residence valued at \$200,000 to Melanie, as her sole property. There is an underlying debt of \$170,000. Prior to the transfer, both Bill and Melanie had contributed to the monthly payments on the debt. After the transfer, Melanie begins to make 100% of the payments, with Bill contributing nothing toward the debt. Bill's equity (\$15,000) is a gift, but Melanie's taking over the payments on the mortgage is consideration received by Bill. Real estate excise tax is due on \$85,000 (Bill's fractional interest in the property multiplied by the outstanding debt at the time of transfer:  $50\% \times \$170,000$ ).

(vii) Casey and Erin, as joint owners, convey their residence to Erin. There is an underlying debt of \$170,000 in both their names. For the three years prior to the transfer, Erin made 100% of the payments on the debt. After the transfer, Erin continues to make 100% of the payments. The transfer is exempt from the real estate excise tax because Erin made all the payments on the property before the transfer as well as after the transfer; there is no evidence that her payments were consideration for the transfer.

**(d) Examples—Refinanced debt.**

(i) Bob conveys his residence to himself and Jane. Within one month of the transfer, Bob and Jane refinance the underlying debt of \$175,000 in both their names, but Bob continues to make the payments on the debt. Jane does not contribute any funds toward the payments. The conveyance qualifies for the gift exemption because Jane gave no consideration for the transfer.

(ii) Casey and Erin, as joint owners, convey their residence valued at \$200,000 to Erin as sole owner. There is an underlying mortgage on the property of \$170,000. Prior to the transfer, Casey and Erin had both contributed to the monthly mortgage payments. Within one month of the transfer, Erin refinances the mortgage in her name only and begins to make payments from her separate account. In this case, there is a rebuttable presumption that this is a disguised sale, since Erin, through her refinance, has assumed sole responsibility for the underlying debt. Real estate excise tax is due on \$85,000 (Casey's fractional interest in the property multiplied by the total debt on the property:  $50\% \times \$170,000$ ).

(iii) Kyle conveys his residence valued at \$200,000 to himself and Amy as tenants in common. Kyle has \$25,000 in equity, and an underlying debt of \$175,000. Within one month of the transfer, Kyle and Amy refinance the mortgage in both their names, and open a joint bank account to which they contribute funds equally. Payments on the new mortgage are made from the joint account. There is a rebuttable presumption that Amy's contributions to the joint account are consideration for the transfer, since Amy appears to have agreed to pay half of the monthly debt payment, and real estate excise tax may be due. The measure of the tax is one-half of the underlying debt to which Amy is contributing (\$87,500).

(iv) Kyle conveys his residence to himself and Amy. Kyle continues to make the payments on the underlying debt of \$175,000. Nine months after the transfer, Kyle and Amy refinance the property in both of their names. After the refinance, Kyle and Amy contribute equally to a new joint bank account from which the mortgage payments are now made. Amy's contribution to the mortgage nine months after the transfer is not deemed consideration in exchange for the transfer from Kyle to the two of them as tenants in common. The conveyance will qualify for the gift exemption.

(e) **Example—Refinanced debt—"Cosigner."** Charlie and Sadie, a married couple, own a residence valued at \$200,000 with an underlying mortgage of \$170,000. Sadie receives the property when they divorce. After a few months, Sadie tries to refinance, but her credit is insufficient to obtain a loan in her name only. Aunt Grace offers to assist her by becoming a "co-borrower" on the loan. As a result, the bank requires that Aunt Grace be added to the title. Following the refinance, Sadie makes 100% of the payments on the new debt, and Aunt Grace gives no consideration for being added to the title. The conveyance adding Aunt Grace to the title is exempt from real estate excise tax. Although the quitclaim deed from Sadie to Aunt Grace may be phrased as a gift, the transfer is exempt as Aunt Grace's presence on the title acts as an exempt security interest to protect Aunt Grace in the event Sadie defaults on her mortgage. See WAC 458-61A-215 for this exemption.

(f) **Example—Rental or commercial property.** Sue owns a rental property valued at \$200,000, with an underlying mortgage of \$175,000. Sue conveys the property to herself and Zack as tenants in common. Prior to the transfer, the rental income went to a bank account in Sue's name only, and she made the mortgage payments from that account. After the transfer, Zack's name is added to the bank account. The rental income is now deposited in the joint account, and the mortgage payments are made from that account. There is a rebuttable presumption that this is a taxable transaction, because this appears to be a business arrangement. As a business venture, one-half of the rental income now belongs to Zack, and is being contributed toward payment of the mortgage. The real estate excise tax will be due on the one-half interest of the debt contributed by Zack (\$87,500).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-201, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-202 Inheritance or devise. (1) Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of

this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The conveyance of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, retaining a life estate for themselves. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex,

retaining a life estate for themselves, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a testamentary trust without probate, a certified copy of the death certificate, and a copy of the trust agreement showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Other.** A certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-202, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-203 Community property, dissolution of marriage, legal separation, decree of invalidity. (1) Community property.** Transfers from one spouse to the other that establish or separate community property are not subject to the real estate excise tax.

(2) **Court decree.** The real estate excise tax does not apply to any transfer, conveyance, or assignment of property or interest in property from one spouse to the other in fulfillment of a settlement agreement incident to a decree of dissolution, declaration of invalidity, or legal separation.

(3) **Transfers to third parties.** A sale of real property by either one or both spouses to a third party is subject to the real estate excise tax, regardless of whether the sale is pursuant to the terms of a decree of dissolution, declaration of invalidity, or legal separation.

(4) **Former spouses.** Transfers of real property between ex-spouses that are independent of any settlement agreement incident to their decree of dissolution or decree of invalidity are subject to the real estate excise tax, unless otherwise exempt under this chapter.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-203, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-204 Tenants in common and joint tenants. (1) Introduction.** The real estate excise tax does not apply to the transfer of real property that results in the creation of a tenancy in common or joint tenancy with or without right of survivorship if no consideration passes otherwise. See WAC 458-61A-201, Gifts.

(2) **Partition.** The partition of real property by tenants in common or joint tenants, by agreement or as the result of a court decree, is not subject to real estate excise tax. A partition results when tenants in common agree that certain tenants will be assigned certain particular tracts within the property that they own together. Transfers to partition real prop-

erty are not subject to the real estate excise tax provided that the transfer is without additional consideration passing.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Betsy, Haley, and Kalli own five riverfront parcels as tenants in common. One parcel is worth twice as much as any of the others, which are all equivalent in value. The property is partitioned. Betsy receives the especially valuable parcel; Haley and Kalli receive two parcels each. No real estate excise tax is due, since the partition of the property is by agreement and no additional consideration passed between the parties.

(b) David and Corwin are business partners; they own two parcels of real estate as tenants in common. One parcel is valued at \$200,000 and has an underlying debt of \$175,000. The other parcel is valued at \$25,000 and has no underlying debt. Pursuant to a proceeding to liquidate their partnership, the court orders partition of the real property. David receives the more valuable parcel and assumes full responsibility for the debt. Corwin receives the less valuable parcel. No real estate excise tax is due, because the partition of the property is pursuant to a court order.

(4) The transfer of property upon the death of a joint tenant to the remaining joint tenants under a right of survivorship is not subject to the real estate excise tax. Transfers of real property by inheritance are not subject to the real estate excise tax. WAC 458-61A-202, Inheritances or devise, is cited on the real estate excise tax affidavit to claim an exemption from the real estate excise tax for such transfers.

(5) The sale of an interest in real property from one or more joint tenants or tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the total of the following:

(a) Any consideration given; and

(b) Any consideration promised to be given, including the amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-204, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-205 Government transfers. (1) Introduction.** Transfers of real property from a government entity are not subject to the real estate excise tax. Transfers of real property to a government entity are subject to real estate excise tax unless specifically exempted under this chapter. A completed real estate excise tax affidavit is required for transfers both to and from a government entity.

(2) **Government seller.** A governmental entity selling real property is exempt from the real estate excise tax.

(3) **Government purchaser.** Generally, a seller that is not a governmental entity must pay real estate excise tax on voluntary sales of real property to a governmental entity unless the transfer is otherwise exempt under this chapter. See WAC 458-61A-206 regarding transfers pursuant to condemnation proceedings or under threat of the exercise of eminent domain.



(4) **Transfers for a public purpose.** Transfers to a governmental entity for a public use in connection with the development of real property by a developer when the transfer is required for plat approval are not subject to the real estate excise tax. For example, a developer who deeds property to the city for streets and utilities is not subject to real estate excise tax on the transfer.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-205, filed 11/16/05, effective 12/17/05.]

#### **WAC 458-61A-206 Condemnation proceedings. (1)**

**Introduction.** Transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain, a court judgment or settlement with a government entity based upon a claim of inverse condemnation, or as a result of the actual exercise of eminent domain, are not subject to the real estate excise tax.

(2) **Transfer must be to a governmental entity.** To qualify for this exemption, the threat of condemnation or the exercise of eminent domain must be made by a governmental entity with the actual power to exercise eminent domain.

(3) **Threat to exercise eminent domain must be imminent.** To qualify for this exemption, the governmental entity must have either filed condemnation proceedings against the seller/grantee; or:

(a) The governmental entity must have notified the seller in writing of its intent to exercise its power of eminent domain prior to the sale; and

(b) The governmental entity must have the present ability and authority to use its power of eminent domain against the subject property at the time of sale; and

(c) The governmental entity must have specific statutory authority authorizing its power of eminent domain for property under the conditions presented.

(4) **Inverse condemnation.** Inverse condemnation occurs when the government constructively takes real property even though formal eminent domain proceedings are not actually taken against the subject property. The seller must have a judgment against the governmental entity, or a court approved settlement, based upon inverse condemnation to claim the exemption.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a sale to a governmental entity may or may not be exempt on the basis of condemnation or threat of eminent domain. The status of each situation must be determined after a review of all the facts and circumstances.

(a) The Jazz Port school district wants to purchase property for a new school. An election has been held to authorize the use of public funds for the purchase, and the general area for the site has been chosen. In order to proceed, the district will need to obtain a five-acre parcel owned by the Fairwood family. The district has been granted authority to obtain property by the use of eminent domain if required. The district has notified the Fairwoods in writing of its intention to exercise its powers of eminent domain if necessary to obtain the land. The Fairwoods, rather than allowing the matter to proceed to court, agree to sell the parcel to the Jazz Port district. The school district will use the parcel for construction of the new school. The conveyance from the Fairwoods to Jazz Port school district is exempt from real estate excise tax because

the transfer was made under the imminent threat of the exercise of eminent domain.

(b) The Sonata City Parks Department has the authority to obtain land for possible future development of parks. The department would like to obtain waterfront property for preservation and future development. They approach Frankie and Chaz Friendly with an offer to purchase the Friendlys' 20-acre waterfront parcel. The Parks Department does not have a current appropriation for actual construction of a park on the site, and the City Council has not specifically authorized an exercise of eminent domain to obtain the subject property. The conveyance from the Friendlys to the city is subject to the real estate excise tax, because the transfer was not made under the imminent threat of the exercise of eminent domain.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-206, filed 11/16/05, effective 12/17/05.]

#### **WAC 458-61A-207 Bankruptcy. (1) Introduction.**

The real estate excise tax does not apply to the conveyance of real property by a trustee in bankruptcy or debtor in possession made under either a confirmed chapter 11 plan or a confirmed chapter 12 plan. Federal law preempts real estate excise tax on these transfers.

(2) **Documentation requirements.** A copy of the Order of Confirmation or an extract from the Confirmed Bankruptcy Plan, showing the date the bankruptcy plan was confirmed, the court case cause number, and the bankruptcy chapter number must be attached to the real estate excise affidavit provided to the department.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-207, filed 11/16/05, effective 12/17/05.]

#### **WAC 458-61A-208 Foreclosure—Deeds in lieu of foreclosure—Sales pursuant to court order. (1) Introduction.**

The real estate excise tax does not apply to any transfer or conveyance made pursuant to an order of sale by a court in any mortgage or lien foreclosure proceeding or upon execution of a judgment. Real estate excise tax affidavits which state claims for this tax exemption must cite the cause number of the foreclosure proceeding on the affidavit and the conveyance document. A copy of the court decision must be attached to the department's affidavit copy by the county treasurer.

(2) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Joan and Sam are friends. They decide to jointly purchase real property worth \$100,000 as tenants in common. One year later, they decide to end their co-ownership of the property. Joan and Sam cannot agree on how the property should be divided. They both obtain legal counsel and go to court to resolve the issue. The court orders that Sam will deed his interest in the real property to Joan and Sam will be paid \$65,000 for his interest in the property. No real estate excise tax is due on the transfer since the transfer is pursuant to a court ordered sale.

(b) Rather than going to trial, Joan and Sam agree to a settlement during the course of their negotiations. The attor-

neys draft an agreeable settlement under which Sam will get the property and Joan will be paid \$75,000. The settlement agreement is presented to the court and the judge signs off on the agreement. Tax is due on the transfer because this is not a court ordered sale.

(3) **Foreclosure and contract forfeiture.** The real estate excise tax does not apply to the following transfers where no additional consideration passes:

(a) A transfer by deed in lieu of foreclosure to satisfy a mortgage or deed of trust;

(b) A transfer from a contract purchaser to the contract holder in lieu of forfeiture of a contract of sale upon default of the underlying obligation; or

(c) A transfer occurring through the cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, regardless of whether the contract contains a forfeiture clause, such as a declaration of forfeiture made under the provisions of RCW 61.30.070.

(d) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(i) Meg sells real property to Julie on a real estate contract. The contract price is \$65,000. Julie makes payments for one year and then loses her job and can't make payments on the contract. Julie feels that she has some equity in the property, but she and Meg disagree on how to resolve the issue. Eventually, they come to an agreement. Meg will pay Julie \$1,500; Julie will sign a deed in lieu of forfeiture and transfer the property to Meg. At the time of the deed in lieu of forfeiture, the outstanding balance of the contract was \$61,000. Even though the transfer was by a deed in lieu of forfeiture, there is additional consideration passing (the \$1,500). The transfer is subject to tax. The taxable selling price is \$62,500, which is the total of the outstanding contract balance that was canceled plus the \$1,500 paid to Julie.

(ii) Sally sells real property to Frank. Frank obtains a \$150,000 loan from Easy Bank. The bank secures the loan with a deed of trust on the real property. Frank is unable to make the payments on the loan. Frank transfers the property back to Easy Bank by deed in lieu of foreclosure to satisfy the deed of trust. No real estate excise tax is due on the transfer.

(iii) Mel sells real property to George. George obtains a \$100,000 loan from Zephyr Bank. The bank secures the loan with a deed of trust on the real property. George is unable to make the payments on the loan. George obtains a second loan of \$25,000 from Sam. Sam secures his loan with a second deed of trust on the real property. Sam's deed of trust is in junior position to Zephyr Bank's deed of trust. Later, George can't make payments to either the bank or Sam. At this time, George owes the Bank \$95,000 and Sam \$23,000. George transfers the real property to Sam by deed in lieu of foreclosure to satisfy Sam's junior deed of trust. The debt to Zephyr Bank (the senior position debt) remains unpaid on the property at the time of transfer. The transfer is partially exempt and partially taxable. The deed in lieu of the junior position debt is exempt. The senior position debt to the bank that remains outstanding on the property at the time of the transfer

meets the definition of consideration and is subject to tax. Tax would be due on \$95,000.

(iv) Joe purchases a manufactured home and has it installed in a mobile home park. Joe signs a contract with the mobile home park owner to pay \$300 in monthly rent. If the rent is not paid, the contract states that the park owner has a lien against the manufactured home. Joe is injured and moves in with relatives in another state. Joe does not pay rent for six months. The park owner, takes title to the mobile home under the authority of the rent contract, and puts it up for sale to recover his interest for back rent. The park owner sells the manufactured home to Mimi. No tax is due on the transfer to the park owner, since that transfer was to satisfy a lien on the property. Real estate excise tax is due on the sale to Mimi.

(4) **Deed of trust.** The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.

(5) **Assignment of indebtedness.** A transfer from a servicing agent, who has acquired real property under this section, to the actual owner of the indebtedness that was foreclosed upon is not subject to real estate excise tax. A copy of the assignment of the indebtedness or a copy of the trustee's deed identifying the servicing agent as an agent for the actual owner must be attached to the real estate excise tax affidavit provided to the department for exemptions claimed under this subsection.

For example, Gil sells real property to Max. Max obtains a \$125,000 loan from Zone Finance. The finance company secures the loan with a deed of trust on real property. Zone Finance sells the loan to Federal National Mortgage Association (Fannie Mae). The finance company becomes the servicing agent for the loan. Max can't make payments on the loan. Due to nonpayment on the debt, the Trustee (under the authority of the Deed of Trust) conducts a Trustee's sale of the real property. The Trustee transfers the property to the Zone Finance via a Trustee's Deed. No real estate excise tax is due on that transfer. Zone Finance Company transfers real property to Fannie Mae, the actual owner of the debt. No real estate excise tax is due on that transfer.

(6) **Sheriff's sale.**

(a) **Introduction.** The real estate excise tax does not apply to a transfer of real property made by a county sheriff pursuant to a court decree. A real estate excise tax affidavit must be filed with the county.

(b) The real estate excise tax applies to a subsequent sale or assignment of the right of redemption and the certificate of purchase that result from the sheriff's sale. The taxable consideration includes any payment given or promised to be given. It also includes the amount of underlying encumbrance, the payment of which is necessary for the exercise of the right of redemption.

(c) **Examples.**

(i) Bill sells property to Sam on a contract. After one year, Sam stops making payments on the contract. Bill obtains a judgment against Sam for nonpayment. At the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. Sam is unable to make payment to redeem the right of redemption during the redemption period. When the redemption period is over, Bill turns the certificate of purchase over to the Sheriff. The Sheriff issues a Sheriff's

Deed to Bill. No real estate tax is due on the issuance of the Sheriff's deed to Bill.

(ii) Alternatively, at the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. To exercise the right of redemption, the holder must remit \$50,000 to the Sheriff. Sam sells the right of redemption to Jerry for \$10,000. Real estate excise tax is due on \$60,000 for the transfer of the right of redemption from Sam to Jerry. Jerry exercises the right of redemption by paying \$50,000 to the Sheriff. The Sheriff issues a Sheriff's Deed to Jerry. No real estate tax is due on the issuance of the Sheriff's deed to Jerry.

(7) **Documentation.** In addition to the documentation requirements set forth in subsections (1) and (5) of this section, a copy of the recorded original mortgage, deed of trust, contract of sale, or lien document must be presented with the real estate excise tax affidavit.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-208, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-209 Rescission of sale. (1) Introduction.** The reconveyance of property due to a rescission of sale is not subject to the real estate excise tax.

(2) **Consideration must be repaid to buyer.** To qualify for exemption under this rule, all consideration paid toward the selling price must be returned by the seller to the buyer at the time of the reconveyance.

(a) A seller may retain interest paid by the buyer without disqualifying the exemption.

(b) The payment of a reasonable reimbursement for site improvements will not disqualify the exemption.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a reconveyance may or may not be exempt on the basis of a rescission of sale. The status of each situation must be determined after a review of all the facts and circumstances.

(a) Scott sold his property to Mary by real estate contract for \$200,000 on January 15, 2004. Real estate excise tax was paid to Lion County. Mary gave Scott a down payment of \$10,000 and started making monthly payments of \$1,000 per month to Scott beginning March 2004. In September 2004 Mary notified Scott that she lost her job and wanted to rescind the purchase contract. Scott agreed to take the property back and returned the down payment of \$10,000, and the monthly principal payments totaling \$600 to Mary. The transfer back to Scott from Mary is exempt from real estate excise tax.

(b) Tony purchased Charlie's property by real estate contract for \$100,000 in March 2003. Real estate excise tax of \$1,780 was paid to Puget County. Tony made a \$15,000 down payment and began making \$800 monthly contract payments in May 2003. On October 31, 2004, Tony found out that the property had some minor problems and he wanted to rescind the purchase. Charlie agreed to take the property back but would not give back the money Tony had paid to Charlie for the property. Since all consideration paid toward the purchase of the property was not returned by Charlie, the transfer from Tony to Charlie does not qualify for exemption from real estate excise tax under this rule.

(c) Julie contracted to sell property to Amanda for \$150,000 in April 2004. Julie paid real estate excise tax to

Rainier County before Amanda obtained financing. Amanda made a \$20,000 down payment to Julie and applied for a conventional loan to pay the balance of \$130,000. Subsequently, Amanda found out she could not qualify for a loan due to her past credit history. Amanda transferred the property back to Julie, and Julie returned the \$20,000 down payment to Amanda. The transfer back to Julie is exempt from real estate excise tax. In addition, the initial transfer from Julie to Amanda is exempt because Amanda was unable to qualify for a loan to finalize the purchase of the property.

(4) **Refunds.** See WAC 458-61A-301 for refund procedures with respect to real estate excise tax paid on original transfer when the sale is later rescinded.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-209, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-210 Irrevocable trusts. (1) Introduction.** The distribution of real property to the beneficiaries of an irrevocable trust is not subject to the real estate excise tax if no valuable consideration is given for the transfer and the distribution is made according to the trust instrument.

(2) **Transfer into trust.** A conveyance of real property to an irrevocable trust is subject to the real estate excise tax if:

(a) The transfer results in a change in the beneficial interest and not a mere change in identity or ownership; and

(b) There is valuable consideration for the transfer.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a trust conveyance may or may not be exempt from real estate excise tax. The status of each situation must be determined after a review of all the facts and circumstances.

(a) Eric and Annie, husband and wife, transfer real property valued at \$500,000 to an irrevocable trust. The property has an underlying debt of \$300,000 that is secured by a deed of trust. Under the terms of the trust, the trustee is required to pay all the income annually to the grantors (Eric and Annie), or to the survivor if one of them dies. Upon the death of both Eric and Annie, the property will be divided equally among their children. The conveyance of the property into the trust is not subject to the real estate excise tax, even if the trust pays the indebtedness, because there has been no change in the present beneficial interest, and Eric and Annie did not receive consideration for the transfer.

(b) Jim and Jean, husband and wife, own real property valued at \$800,000. Upon Jean's death, her one-half interest in the property is transferred to Jean's testamentary trust under the terms of her will. Jim, as trustee, has sole discretion to accumulate income or to pay income to himself, or to their children, or to their grandchildren, or to each. The transfer to the trust is not subject to real estate excise tax. See WAC 458-61A-202.

(c) Upon Jean's death, Jim's remaining half-interest in the property is valued at \$400,000, with an underlying debt of \$30,000, for which he is personally liable. Jim transfers his half-interest to Jean's testamentary trust, and the trust pays or is obligated to pay the indebtedness. The conveyance of Jim's one-half interest is subject to real estate excise tax, because the transfer involves both a present change in the beneficial interest (after Jean's death, assets in Jean's trust are legally separate from assets belonging to Jim) and there is valuable consideration in the form of relief of liability for the debt. The

real estate excise tax is due on the amount of the consideration (\$30,000).

(4) **Revocable trusts.** See WAC 458-61A-211 for the taxability of transfers into a revocable trust.

(5) **Documentation.** When real property is transferred to or from a testamentary trust, or real property is transferred to or from an irrevocable trust, the following must be provided:

- (a) A copy of the trust instrument; or
- (b) A statement signed by the trustee or the grantor, or the representative of the trustee or grantor containing the following information:
  - (i) The name, address, and telephone number of the trustee or grantor, and/or representative of the trustee or grantor who is authorized to represent the trustee or grantor before the department of revenue;
  - (ii) The character of the trust, e.g., testamentary, irrevocable living trust, etc.;
  - (iii) The nature of the transfer:
    - (A) If the transfer is to or from a testamentary trust, the nature of and reason for the transfer.
    - (B) If the transfer is to or from an irrevocable living trust:
      - (I) The nature and reason for the transfer;
      - (II) Whether or not the property is encumbered with debt; and
      - (III) Whether or not the trustee may, at the time of the transfer, distribute income and/or principal to a person(s) other than the grantor(s).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-210, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-211 Mere change in identity or form—Family corporations and partnerships.** (1) **Introduction.** A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. This exemption is not limited to transfers involving corporations and partnerships, and includes transfers of trusts, estates, associations, limited liability companies and other entities. If the transfer of real property results in the grantor(s) having a different proportional interest in the property after the transfer, real estate excise tax applies.

(2) **Qualified transactions.** A mere change in form or identity where no change in beneficial ownership has occurred includes, but is not limited to:

(a) The transfer by an individual or tenants in common of an interest in real property to a corporation, partnership, or other entity if the entity receiving the ownership interest receives it in the same pro rata shares as the individual or tenants in common held prior to the transfer. (See also WAC 458-61A-212, Transfers where gain is not recognized under the Internal Revenue Code.)

(b) The transfer by a corporation, partnership, or other entity of its interest in real property to its shareholders or partners, who will hold the real property either as individuals or as tenants in common in the same pro rata share as they owned the corporation, partnership, or other entity. To the extent that a distribution of real property is disproportionate to the interest the grantee partner has in the partnership, it will be subject to real estate excise tax.

(c) The transfer by an entity of its interest in real property to its wholly owned subsidiary, the transfer of real property from a wholly owned subsidiary to its parent, or the transfer of real property from one wholly owned subsidiary to another.

(d) The transfer by a corporation, partnership or other entity of its interest in real property to another corporation, partnership, or other entity if the grantee owner(s) receives it in the same pro rata shares as the grantor owner(s) held prior to the transfer.

(e) Corporate mergers and consolidations that are accomplished by transfers of stock or membership, and mergers between corporations and limited partnerships as provided in chapters 25.10 and 24.03 RCW.

(f) A transfer of real property to a newly formed, beneficiary corporation from an incorporator to the newly formed corporation, provided:

- (i) The proper real estate excise tax was paid on the original transfer to the incorporator; and
- (ii) It was documented on or before the original transfer that the incorporator received title to the property on behalf of that corporation during its formation process.

This tax exemption does not apply to a transaction in which a property owner acquires title in his or her own name and later transfers title to the corporation upon its formation.

(g) A transfer into any revocable trust.

(h) A conveyance from a trustee of a revocable trust to the original grantor or to a beneficiary if no valuable consideration passes, or if the transaction is otherwise exempt under this chapter (for example, a gift or inheritance). A sale of real property by the trustee to a third party, or to a beneficiary for valuable consideration, is subject to the real estate excise tax.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Andy owns a 100% interest in real property. He transfers his property to his solely owned corporation. The transfer is exempt from real estate excise tax because there has been no change in the beneficial ownership interest in the property.

(b) Elizabeth owns a 100% interest in real property, and is the sole owner of Zippy Corporation. She transfers her property to Zippy. The corporation pays \$5,000 to Elizabeth and agrees to make payments on the underlying debt on the property. Despite the fact that there was consideration involved in the transfer, it is still exempt from tax because there was no change in beneficial ownership.

(c) Jim, Kathie, and Tim own real property as joint tenants. They transfer their property to their LLC in the same pro rata ownership. The transfer is exempt from real estate excise tax because there has been no change in beneficial ownership.

(d) Pat, Liz, and Erin own Stage Corporation. They also own Song & Dance Partnership, in the same pro rata ownership percentages as their interests in the corporation. Stage Corporation transfers real property to Song & Dance Partnership. The transfer is exempt from real estate excise tax, because there has been no change in beneficial interest.

(e) Morgan owns real property. Brea owns Sparkle Corporation. Morgan transfers real property to Sparkle in exchange for an interest in the corporation. The transfer is subject to real estate excise tax because there has been a change in the beneficial interest in the real property. The tax applies to the extent that the transfer of real property results in the grantor having a different proportional interest in the property after it is transferred. (Note, however, that Morgan and Brea may be able to structure their transaction in a manner that would qualify for exemption under WAC 458-61A-212.)

(f) Dan owns property as sole owner. Jill owns property as sole owner. Dan and Jill each transfer their property to Rhyming LLC, which they form together. The transfers are taxable because there has been a change in the beneficial ownership interest in the real property. To the extent that the transfer of real property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Dan and Jill may qualify for an exemption under WAC 458-61A-212.)

(g) Fred and Steve are equal partners in Jazzy Partnership. They decide to transfer real property from the partnership to themselves as individuals. Based on its true and fair value, the partnership transfers 60% of the real property to Fred and 40% to Steve. This distribution is not in proportion to their ownership interest in Jazzy Partnership, and the transfer is not exempt because there has been a change in the beneficial ownership interest. To the extent that the transfer of property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Fred and Steve may qualify for an exemption under WAC 458-61A-212.)

#### (4) Disparate treatment of ownership interests.

(a) Where the ownership of real property is different for financial accounting purposes than for federal tax purposes, the beneficial ownership interest in the real property is deemed the entity which is the owner for financial accounting purposes. Any transfer from the entity that is the owner for federal tax purposes to the owner for financial accounting purposes, or vice versa, is subject to the real estate excise tax.

(b) For example, Giant Company wants to expand its business. It identifies some real property, but is unable to finance the purchase through a normal loan. It contracts with Mega Loans Inc. to enter into a "synthetic lease" for the purchase of the real property. Under the terms of the synthetic lease, Mega Loans will take title to the real property, and Giant Company will lease it from Mega Loans. Real estate excise tax is paid on the purchase of the real property by Mega Loans. The terms of the lease also provide that Mega Loans will be the owner for federal tax purposes and Giant Company will be the owner for financial accounting purposes. Per the lease agreement, after a specified time Mega Loans will transfer title to the real property to Giant Company. The transfer of title from Mega Loans to Giant Company is subject to real estate excise tax.

(5) **Family corporations, partnerships, or other entities.** This exemption applies to transfers to an entity that is wholly owned by the transferor and/or the transferor's spouse or children, regardless of whether the transfer results in a change in the beneficial ownership interest. However, real

estate excise taxes will become due and payable on the original transfer as otherwise provided by law if:

(a) The partnership or corporation thereafter voluntarily transfers the property; or

(b) The transferor, spouse or children voluntarily transfer stock in the corporation, or interest in the partnership capital to other than:

(i) The transferor and/or the transferor's spouse or children;

(ii) A trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of transfer to the trust; or

(iii) A corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer is not paid within sixty days of becoming due.

For example, parents own real property as individuals. They create an LLC that is owned by themselves and their three children. The parents transfer the real property to the LLC. Despite the fact that there was a change in beneficial ownership interest, it is still exempt from tax, because the LLC is owned by the grantor and/or the grantor's spouse or children.

**(6) Transfers when there is not a change in identity or form of ownership of an entity.** This exemption applies to transfers of real property when the grantor and grantee are the same.

For example, John and Megan own real property as tenants in common. They decide that they prefer to hold the property as joint tenants with rights of survivorship. John and Megan, as tenants in common, convey the property to John and Megan as joint tenants with rights of survivorship. The transfer is exempt from real estate excise tax.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-211, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-212 Transfers where gain is not recognized under the Internal Revenue Code. (1) Introduction.** A transfer that, for federal income tax purposes, does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, is not subject to the real estate excise tax.

**(2) Internal Revenue Code sections.** This exemption includes, but is not limited to, nonrecognition of loss or gain under the following sections of the Internal Revenue Code of 1986:

(a) Section 332 - Corporate liquidations - Complete liquidations of subsidiaries.

(b) Section 337 - Corporate liquidations - Nonrecognition for property distributed to parent in complete liquidation of subsidiary.

(c) Section 351 - Corporate organizations and reorganizations - Transfer to corporation controlled by transferor.

(d) Section 368 (a)(1) - Corporate organizations and reorganization - Definitions relating to corporate reorganizations - Reorganizations - In general.

(e) Section 721 - Partners and partnerships - Nonrecognition of gain or loss on contribution.

(f) Section 731 - Partners and partnerships - Extent of recognition of gain or loss on distribution.

(3) **Extent of exemption.** This exemption applies only to transfers that qualify as nonrecognition of gain or loss transactions under the Internal Revenue Code for entity formation, liquidation or dissolution, and reorganization.

(a) This exemption does not apply to transactions under Internal Revenue Code section 1031 - Exchange of property held for productive use or investment. That section of the Internal Revenue Code does not deal with entity formation, liquidation or dissolution, or reorganization. (See WAC 458-61A-213, IRS "tax deferred" exchanges.)

(b) This exemption does not apply to sales under Internal Revenue Code section 1034 - Rollover of gain on sale of principal residence. That section of the Internal Revenue Code does not deal with entity formation, liquidation or dissolution, or reorganization.

(4) **Treatment when gain is partially recognized in an otherwise exempt transaction.** In the event a transaction qualifies for the exemption under this section as a nonrecognition of gain or loss transaction for entity formation, liquidation or dissolution, or reorganization, but a gain is partially recognized under the Internal Revenue Code provisions, the real estate excise tax applies to the amount of the transaction for which gain is recognized.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) In an otherwise nontaxable Internal Revenue Code section 351 transaction, Nate transfers to ZULU Corporation real property which has a true and fair value of \$100,000. Nate receives, in exchange, ZULU stock worth \$80,000, cash of \$5,000, and a promissory note from ZULU to pay Nate \$15,000 monthly, starting at closing, for 36 months at 6% interest. The \$5,000 cash received and the \$15,000 promissory note constitute "boot" under the provisions of section 351 and gain is recognized to the extent of the "boot." For real estate excise tax purposes, the taxable portion is 20% (\$20,000/\$100,000) and the real estate excise tax applies to 20% of the true and fair value of the real property transferred, or \$20,000.

(b) In an otherwise nontaxable Internal Revenue Code section 351 transaction, Sally transfers real property with a true and fair value of \$50,000, and machinery worth \$250,000, to ECHO Corporation. In exchange, Sally receives ECHO stock worth \$275,000 and cash of \$25,000. The cash received constitutes "boot" and gain is recognized. For real estate excise tax purposes, the nonexempt portion of the transaction is 8.3% (\$25,000/\$300,000). The nonexempt percentage (8.3%) is applied to the true and fair value of the real property (\$50,000) to arrive at the amount \$4,167. Real estate excise tax is due on \$4,167.

(c) Brenda and Julie are partners in LIMA Partnership. In a nontaxable Internal Revenue Code section 721 transaction, Mike transfers real property to LIMA Partnership in exchange for a partnership interest in LIMA Partnership. No consideration, other than the partnership interest in LIMA Partnership, is given to Mike in exchange for Mike's transfer of real property. Because the transfer is exempt under Inter-

nal Revenue Code section 721, the real estate excise tax does not apply to Mike's conveyance of real property to LIMA partnership.

(d) Brenda and Julie are also partners in GOLF Partnership. In a nontaxable Internal Revenue Code section 721 transaction, Mike contributes cash to GOLF Partnership in exchange for a 60% partnership interest in GOLF Partnership. The cash is used by the partnership to develop real property owned by the GOLF Partnership. Because the transfer is exempt under Internal Revenue Code section 721, the real estate excise tax does not apply to Mike's acquisition of a partnership interest in GOLF Partnership.

(6) **Rules of construction.** In determining whether a transfer qualifies for exemption under this section, the department will consider the law, regulations, bulletins, technical memoranda, letter rulings, etc., of the Internal Revenue Code and the Internal Revenue Service, as interpreted by the courts. Determinations of taxability under this chapter will be given the same treatment as the final determination of taxability for federal tax purposes.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-212, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-213 IRS "tax deferred" exchange. (1) Introduction.** This rule describes the application of the real estate excise tax in transfers involving an exchange facilitator. An "exchange facilitator" is a person who acts as an agent on behalf of another person in connection with an exchange of real property under section 1031 of the Internal Revenue Code section 1031 of 1986.

(2) Acquisition of property by an exchange facilitator in connection with a section 1031 tax deferred exchange is subject to the real estate excise tax.

(3) The later transfer of the property by the facilitator in completion of the exchange is subject to real estate excise tax, unless the following requirements are met:

(a) The proper tax was paid on the initial transaction;

(b) A supplemental statement signed by the exchange facilitator, as provided by WAC 458-61A-304, is attached to the real estate excise tax affidavit indicating that the facilitator originally took title to the property for the sole purpose of effecting a section 1031 federal tax deferred exchange; and

(c) The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of real property owned by the grantee.

(4) If the deeds for both transactions to and from the facilitator are being recorded at the same time, the proper tax can be paid on either the first or the second transaction at the discretion of the facilitator.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a conveyance of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Bob owns commercial real property in Princeton County worth \$400,000. Bob wants to exchange his property in Princeton County for other commercial property in Eagle County owned by Sally. Sally agrees to sell her Eagle County

property to Bob for \$600,000. Bob places his commercial property in Princeton County for sale. John contacts Bob and agrees to purchase the Princeton County property for \$450,000. Bob contacts Ted, an exchange facilitator, to arrange for a transfer of his property as a 1031 federal tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted transfers the Princeton County property to John and receives \$450,000. Real estate excise tax is due on the transfer from Bob to Ted. No tax is due on the transfer from Ted to John. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, \$450,000 which was received from the Princeton County sale and \$150,000 from a new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob.

(b) Bob is unable to find a buyer for his Princeton County property. Bob contacts Ted, the exchange facilitator, to arrange for a transfer of his property as a 1031 federal tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted holds the property until Bob can locate a buyer. Real estate excise tax is due on the transfer from Bob to Ted. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, provided from a \$600,000 new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob. One month later, Joan agrees to purchase the Princeton County property. Ted transfers the property to Joan for \$350,000. Tax is due on the transfer from Ted to Joan, because the funds used by Ted to acquire the Princeton County property from Bob were not provided by Joan.

(6) **Documentation.** A real estate excise tax affidavit is required for each transfer in a section 1031 exchange including the transfers to and from an exchange facilitator. The affidavit reflecting the claim for tax exemption must show the affidavit number and date of the tax payment, and have attached the supplemental statement as provided by WAC 458-61A-304 and subsection (3)(b) of this section.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-213, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-214 Nominee.** (1) **Introduction.** This rule describes the application of the real estate excise tax in transfers involving a nominee. A "nominee" is a person who acts as an agent on behalf of another person in the purchase of real property.

(2) **Initial acquisition.** The initial acquisition of property by a nominee on behalf of a third party is subject to the real estate excise tax.

(3) **Subsequent transfer.** The later transfer of the property by the nominee to the third party purchaser is subject to real estate excise tax, unless each of the following requirements is met:

(a) The proper tax was paid on the initial purchase of the property by the nominee;

(b) The funds used by the nominee to acquire the property were provided by the third party;

(c) The third party legally existed at the time of the initial transaction; and

(d)(i) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition; or

(ii) In the case where the nominee is a licensed contractor and the subsequent transfer to the third party (customer) reflects the completed construction contract, the retail sales tax is collected on the construction contract and remitted to the department. See also WAC 458-61A-104.

For example, Sara finds a home to buy. However, she is in the military and has learned she is going to be called to duty out of the country. She gives her money for the home purchase to Tom, who finalizes the purchase and obtains the mortgage in his name. Sara pays the down payment, closing costs, and makes all the payments on the mortgage. When Sara returns from duty, Tom will transfer the home back to her, and she will refinance the mortgage into her own name. Tom's transfer to Sara is exempt from real estate excise tax, as Tom was acting as her nominee in the purchase of the home and all funds associated with the purchase of the home have come from Sara.

(4) If the nominee is a licensed contractor transferring to the third-party principal at the completion of a construction contract, proof of the payment to the department of retail sales tax on the construction contract must be attached to the affidavit.

For example, Bill contracted with Phil's Construction to build a home for him on a lot Phil will acquire. Phil buys a lot from Kevin. Real estate excise tax is paid on the sale from Kevin to Phil. Phil's Construction builds the home and collects retail sales tax on the total construction contract, which is then remitted to the department of revenue. Phil's Construction files a real estate excise tax affidavit with the county, together with proof that retail sales tax has been paid. The transfer of the lot and completed home from Phil's Construction to Bill is exempt from real estate excise tax.

(5) **Documentation.** The parties must provide documentation that they have met all the requirements necessary to claim this exemption. Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, or other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

#### **Examples.**

(a) Tom is on title to property. Tom wants to transfer the property to Angie and claim the nominee exemption, but they do not have a notarized statement. In lieu of that statement, Angie presents documentation that she provided the funds for the down payment and all closing costs for the initial purchase of the property. Angie also presents documentation that she provided the funds on the first year's payments on the debt after the initial purchase and provided funds for the last year's payments on the debt. This is acceptable documentation that the requirements of subsection (3) of this section have been satisfied.

(b) Dan wants to buy a house and executes an earnest money agreement, contingent on financing. When he applies

for a mortgage he is turned down because of insufficient credit. Dan's Uncle Bob agrees to purchase the house in his name and loans Dan the down payment of \$10,000. Dan signs a promissory note agreeing to repay Uncle Bob. Dan makes all the mortgage payments on the property. After two years, Dan has sufficient credit to refinance the debt in his own name. Uncle Bob quitclaims title to Dan. This transfer meets the nominee exemption requirements because:

- (i) Real estate excise tax was paid on the initial transaction;
- (ii) The signed earnest money agreement shows Dan's initial intent to purchase the property in his name;
- (iii) Dan has made all the payments on the debt; and
- (iv) The signed promissory note is sufficient evidence Uncle Bob did not intend to have a financial interest in the property.

(6) The affidavit reflecting the claim for tax exemption must show the prior affidavit and number and date of the tax payment.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-214, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-215 Clearing or exiting title, and additions to title. (1) Introduction.** The real estate excise tax does not apply to quitclaim deeds given for the sole purpose of clearing title if no consideration passes otherwise. This rule does not apply to deeds executed for the purpose of adding persons to title, except in cases of persons added to title for co-signing security purposes only.

(2) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a conveyance of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) An exiting minority partner gives the partnership a quitclaim deed for the purpose of removing any presumptive interest. This transfer is exempt from real estate excise tax under this rule.

(b) An heir to an estate gives the estate a quitclaim deed for the purpose of removing any presumptive interest they have in the estate. This transfer is exempt under this rule.

(c) A developer deeds greenbelts, streets or common areas in a development to the homeowners association upon completion of the development and under the terms and covenants of the development. This transfer is exempt under this rule.

(d) Joseph owns a residence and goes to a bank to refinance. His credit is not good enough to obtain the new loan in his name only, but he can qualify if he obtains a co-signor/co-borrower. Joseph's parents agree to co-sign the loan. The bank requests that the parents also go on title with Joseph, and he quitclaims a half interest to his parents. Although the deed may be phrased as a gift to his parents, the deed acts as a security interest for his parents in the event Joseph defaults. The addition of Joseph's parents to the title is exempt under this rule, provided Joseph makes all the mortgage payments, and Joseph receives no consideration from his parents for the transfer.

(e) The parents described in (d) of this subsection who have been on title with their child are now issuing a quitclaim deed to Joseph to exit title. Joseph has now paid off or refinanced the mortgage in his name only. The parents' intention was to go on title as "co-signors" only, not as co-purchasers of the property, and they have not made any payments toward the repayment of the loan. This transfer is exempt under this rule.

(3) **Documentation.** A narrative that explains the nature of the clearance of, or addition to title must be signed by both grantor and grantee, or agents of either, and attached to the real estate excise tax affidavit. The original narrative will be retained with the original affidavit at the county office and a copy of the narrative will be attached to the department's affidavit copy.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-215, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-216 Mortgage insurers. (1) Introduction.** The transfer of real property from a mortgage lender to the Veterans Administration or Federal Housing Authority is an exempt transaction.

(2) The transfer of real property from a mortgage lender to another private insurer or guarantor in settlement of an insurance claim is a taxable transaction.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-216, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-217 Rerecord. (1) Introduction.** The rerecording of documents to correct a legal description, change contract terms, or correct the spelling of the name of a party to the transaction, is not subject to the real estate excise tax.

(2) **Documentation required.** An affidavit is required for the rerecording. The affidavit must refer to the prior affidavit number and the recorded document number for the prior transaction, and must include a complete explanation of why the rerecording is necessary.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-217, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-300 Collection and administration. Introduction.** Real estate excise tax is levied by the state under chapter 82.45 RCW and by counties under chapter 82.46 RCW. The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This section describes the applicable procedures for payment, collection, disposition of proceeds, requests for refunds, penalties, record keeping requirements, requests for rulings, and other administrative processes.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-300, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-301 Payment of tax, collection responsibility, audit responsibility, and tax rulings. (1) Tax imposed.** The taxes imposed are due at the time the sale occurs and are collected by the county when the documents of sale are presented for recording or, in the case of a transfer



of a controlling interest (see WAC 458-61A-101), by the department. The tax is imposed upon the seller.

(2) **Payment of tax. Scope of section.** This section applies to sales of real property that are evidenced by conveyance, deed, grant, assignment, quitclaim, or transfer of title to real property. See WAC 458-61A-101 for procedures pertaining to transfers or acquisitions of a controlling interest in an entity owning real property in Washington.

(3) **County as agent for state.** Real estate excise tax is paid to and collected by the agent of the county where the property is located (unless the transaction involves the transfer of a controlling interest, in which case the tax is paid to the department).

(4) **Computation of tax.** The tax is computed by multiplying the combined state and local tax rates in effect at the time of sale by the selling price. A current list of the current state and local real estate excise tax rates is available on the department's web site at [dor.wa.gov](http://dor.wa.gov). This information is also available by contacting the county where the property is located.

(5) **Evidence of payment.** The county agent stamps the instrument of sale or conveyance prior to its recording as evidence that the tax has been paid or that an exemption from the tax was claimed. In the case of a used mobile home, the real estate excise tax affidavit is stamped as evidence of payment or a claimed exemption. The stamp references the affidavit number, date, and payment of or exemption from tax, and identifies the person stamping the instrument or affidavit.

(6) **Compliance with property tax statutes.** The county agent will not stamp the instrument of conveyance or affidavit if:

(a) A continuance of use has been applied for but not approved by the county assessor under chapter 84.33 or 84.34 RCW; or

(b) Compensating or additional tax is due but has not been paid as required by RCW 84.33.086, 84.33.140 (5)(c), 84.34.108 (1)(c), 84.36.812, or 84.26.080.

(7) **Prerequisites to recording.** The county auditor will not file or record the instrument of conveyance until all taxes due under this section have been paid or the transfer is determined to be exempt from tax as indicated by a stamped document.

(8) **Evidence of lien satisfaction.** A receipt issued by the county agent for payment of the tax may be used as evidence of satisfaction of a lien imposed under RCW 82.45.070.

(9) **Audit authority.** All transactions are subject to audit by the department. The department will audit transactions to confirm the proper amount of tax was paid and that any claim for exemption is valid. Failure to provide documentation to the department as requested may result in denial of any exemptions claimed and the assessment of additional tax.

(10) **Tax assessments.**

(a) If the department discovers an underpayment of tax due, it will notify the taxpayer and assess the additional tax due, together with all applicable interest and penalties. The assessment notice will identify the additional tax due and explain the reason for the assessment.

(b) Persons receiving an assessment must respond within thirty days from the date the assessment was mailed. Failure to respond may result in the assessment of additional penal-

ties and interest and enforcement for collection of the deficient tax under the administrative provisions of chapters 82.32 and 82.45 RCW.

(11) **Tax rulings.** Any person may request a written opinion from the department regarding their real estate excise tax liability pertaining to a proposed transfer of real property or a proposed transfer or acquisition of the controlling interest in an entity with an interest in real property. The request should include sufficient facts about the transaction to enable the department to ascertain the proper tax liability. The department will advise the taxpayer in writing of its opinion. The opinion is binding upon both the taxpayer and the department under the facts presented in accordance with WAC 458-20-100(9), appeals, small claims and settlements. To obtain a written opinion, send your request to:

Department of Revenue  
Taxpayer Information & Education  
P.O. Box 47478  
Olympia, WA 98504-7478

You may also use the "contact" information available online at [dor.wa.gov](http://dor.wa.gov).

(12) **Refunds.**

(a) **Introduction.** Under certain circumstances, taxpayers (or their authorized representatives) may request a refund of real estate excise tax paid. The request must be filed within four years of the date of sale, and must be accompanied by supporting documents.

(b) **Claims for refunds.** Any person having paid the real estate excise tax in error may apply for a refund of the amount overpaid by submitting a completed refund request form.

(c) **Forms and documentation.** Refund request forms are available from the department or the county. The completed form along with supporting documentation is submitted to the county office where the tax was originally paid. If the tax was originally paid directly to the department, the claim form and supporting documentation are submitted to:

Department of Revenue  
Miscellaneous Tax Section  
P.O. Box 47477  
Olympia, WA 98504-7477

(d) **Circumstances under which refunds are authorized.** The authority to issue a refund under this chapter is limited to the following circumstances:

(i) Real estate excise tax was paid on the conveyance back to the seller in a transaction that is completely rescinded (as defined in WAC 458-61A-209);

(ii) Real estate excise tax was paid on the conveyance back to the seller on a sale rescinded by court order. The county treasurer must attach a copy of the court decision to the department's affidavit copy (see also WAC 458-61A-208, Deeds in lieu of foreclosure);

(iii) Real estate excise tax was paid on the initial conveyance recorded in error by an escrow agent before the closing date, provided that the property is conveyed back to the seller;

(iv) Real estate excise tax was paid on the conveyance back to the seller in accordance with (d)(iii) of this subsection;

(v) Real estate excise tax was paid on the initial conveyance recorded before a purchaser assumes an outstanding loan that represents the only consideration paid for the property, provided:

(A) The purchaser is unable to assume the loan; and

(B) The property is conveyed back to the seller. The refund is allowed because there is a failure of the consideration;

(vi) The conveyance back to the seller in (d)(v) of this subsection;

(vii) Double payment of the tax;

(viii) Overpayment of the tax through error of computation; or

(ix) Real estate excise tax paid when the taxpayer was entitled to claim a valid exemption from the tax but failed to do so at the time of transfer.

(e) **Responsibilities of county.**

(i) **Request for refund made prior to disposition of proceeds.** If the taxpayer submits a valid refund request to the county before the county treasurer has remitted the tax to the state treasurer, the county may void the receipted affidavit copies and issue the refund directly. The county will then submit a copy of the initial affidavit, together with a copy of the refund request, to the department. If, after reviewing the request for refund and supporting documentation, the county is unable to determine the validity of the request, the county will send the request, a copy of the affidavit, and all supporting documentation to the department for determination. If the county denies the request for refund, in whole or in part, the taxpayer may appeal in writing to the department's miscellaneous tax section within thirty days of the county's denial.

(ii) **Request for refund made after disposition of proceeds.** If the taxpayer submits the refund request after the county treasurer has remitted the tax to the state treasurer, the county will verify the information in the request and forward it to the department with a copy of the affidavit and any other supporting documents provided by the taxpayer. The county or the department may request additional documentation to determine whether the taxpayer qualifies for a refund.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-301, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal.** (1) **Introduction.** This rule explains how the counties, the department of revenue, and the state treasurer process the taxes and administrative fees received under this chapter.

(2) **County treasurer.** The county treasurer distributes the proceeds of the real estate excise tax in accordance with the provisions of chapters 82.45 and 82.46 RCW. When no real estate excise tax is due on a transaction, the county will collect an administrative fee for processing the real estate excise tax affidavit. RCW 82.45.180.

(3) **Adjustments.** Requests from county treasurers for adjustments to the funds that have been distributed to the state treasurer must be sent to the department for approval or denial. The department will forward to the state treasurer those requests that it approves. If the department denies a request for adjustment, the department will return the request to the county treasurer with an explanation for the denial.

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(4) **Tax paid directly to the department.** Real estate excise tax for transfers of a controlling interest in an entity owning real property in Washington, and any other tax payment under this chapter made directly to the department, are remitted to the state treasurer. The state treasurer deposits the proceeds of the state portion of the tax in the general fund for the support of the common schools. The state treasurer deposits and distributes the proceeds of any local taxes in accordance with the provisions of chapters 82.45 and 82.46 RCW.

(5) **Affidavit batch transmittal.**

(a) **Due date.** The county will submit copies of all the real estate excise tax affidavits for the entire month, together with a completed affidavit batch transmittal form, to the department by the fifth business day following the close of the month in which the tax was received. The affidavit batch must include all affidavits processed during the month, plus copies of any documents related to refunds made by the county.

(b) **Alternate transmittal method.** An alternate method for submitting affidavits may be used in lieu of the paper method described in this rule with the prior approval of the department. Use of an alternate method (e.g., electronic transmittal) requires a signed memorandum of understanding (MOU) between the county and the department.

(c) **Distribution.** The county will complete the affidavit transmittal form, supplied by the department, and send one copy with the affidavit batch to the department. The county will send a second copy of the affidavit batch transmittal with the monthly cash receipts journal summary to the state treasurer's office as documentation for the remittance of the real estate excise tax deposit.

(d) **Reporting of refunds.** The county must report any refunds made during the month on the adjustment section provided on the batch transmittal form and attach all refund documentation.

(e) **Retention of records.** The county treasurer will retain the approved real estate excise tax affidavits, including any supplemental statements, for a period of not less than four years following the year in which the affidavit is received. See RCW 82.45.150 and 82.32.340.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-302, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-303 Affidavit.** (1) **Introduction.** This section explains when a real estate excise tax affidavit is required for the conveyance of an interest in property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evidenced by conveyance, deed, grant, assignment, quitclaim, including, but not limited to, the following:

(a) Conveyance establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity;

(b) Conveyance resulting from a court order;

(c) Conveyance to secure a debt;

(d) Conveyance of a taxable easement;

- (e) A deed in lieu of foreclosure of a mortgage;
- (f) A deed in lieu or declaration of forfeiture of a real estate contract;
- (g) Conveyance to an heir in the settlement of an estate;
- (h) Conveyance to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;
- (i) Conveyance of development rights, water rights, or air rights;
- (j) Conveyance of leasehold improvements;
- (k) Boundary line adjustments; or
- (l) The affidavit must be filed when rerecording a document to correct a minor error, such as the legal description or spelling of a name.

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions:

- (a) Conveyance of cemetery lots or graves;
- (b) Conveyance for assignment or release of security, stated on the face of the instrument:
  - (i) To secure or assign a debt; or
  - (ii) To provide or release collateral;
- (c) A lease of real property that does not transfer lessee-owned improvements;
- (d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;
- (e) A seller's assignment of deed and contract;
- (f) A fulfillment deed pursuant to a real estate contract;
- (g) A community property agreement under RCW 26.16.120;
- (h) Purchase of an option; or
- (i) An earnest money agreement.

(4) **Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in beneficial ownership," and have attached all documentation required by the department.

(5) **Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common, partners, etc., and identify the form and proportion of interest each is acquiring.

(6) **Affidavit must be complete.**

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount

stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

(7) **Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

(8) **Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department. Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement.

(9) **Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

(10) **Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of the conveyance.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-303, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-304 Supplemental statements.** (1) The department will provide the county with a uniform multiuse supplemental statement form for use in meeting the requirements of the following sections of this chapter:

(a) WAC 458-61A-306, Interest and penalties—Date of sale;

(b) WAC 458-61A-201, Gifts; and

(c) WAC 458-61A-213, IRS "tax deferred" exchange.

(2) The supplemental statements must be completed and distributed as required by the instructions contained on the form.

(3) Supplemental statements may be unsworn certified statements that meet the requirements set forth in RCW 9A.72.085.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-304, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-305 Trade-in credit. (1) Introduction.**

When a single-family residential property is transferred as either partial or entire consideration for the purchase of another single-family residential property, a credit for the amount of the real estate excise tax paid at the time of the first transfer is allowed toward the amount of the real estate excise tax due upon the later transfer of the same property.

(2) **Refund not available.** The later transfer must be made within nine months of the original transfer for the credit to be allowed. If the tax that would be due on the later transfer is greater than the tax paid for the first transfer, the difference must be paid. However, if the tax paid on the first transfer is greater than that due on the second transfer, no refund of tax paid will be allowed.

(3) The trade-in credit is allowed toward the later sale of the residence "brought in" on trade, not toward the tax liability of the sale of the residence for which it was traded. The affidavit upon which the trade-in credit is claimed must show all of the following:

(a) The transaction date and prior affidavit number where the tax was paid on the original (trade-in) transaction;

(b) The county auditor's recorded document number for the original transaction, if such was recorded; and

(c) The disclosure that both properties involved in the original trade-in transaction are single-family dwellings.

For example, Bob is selling real property in Sun City. Alex wants to buy Bob's property, but he needs to sell his property in Smokey Hollow. Both the Sun City property and the Smokey Hollow property are single-family residential properties. Bob agrees to buy Alex's Smokey Hollow property for \$175,500 and Alex agrees to buy Bob's Sun City property for \$210,000. Real estate excise tax is paid on the full sales price of both properties. Three months later, Bob sells the Smokey Hollow property to Sally for \$180,000. Bob receives a credit on the sale to Sally for the tax paid on the previous sale of the Smokey Hollow property.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-305, filed 11/16/05, effective 12/17/05.]

**WAC 458-61A-306 Date of sale, interest, and penalties. (1) Introduction.**

This rule explains how to determine the date of sale and explains the application of interest and penalties when the tax is not paid within one month of the date of sale. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Date of sale.** Real estate excise tax is due and payable to the county on the date of sale, regardless of the date on which the contract of sale or instrument of conveyance is recorded.

**(a) Conditions to be fulfilled prior to completing sale.**

When a contract of sale or instrument of conveyance is signed and delivered by the seller to an escrow agent licensed under chapter 18.44 RCW (Escrow Agent Registration Act), a title company, a title insurance company, or an attorney acting as an escrow agent, with instructions to deliver the instrument to the buyer upon the fulfillment of one or more conditions that had prevented the sale from being completed, the date of sale will be presumed to be the date that the instrument is presented for recording, subject to the following:

(i) A statement, signed by the seller's agent, is attached to the affidavit indicating the specific conditions that had to be met in order for the sale to be completed;

(ii) The date shown on the instrument cannot be more than ninety days prior to the date the affidavit is presented to the county treasurer for filing; and

(iii) All documentation required by the department must be provided to the county agent when submitting the affidavit claiming an exemption from interest and penalty pursuant to this rule.

(b) **Sale of mining property.** A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, is taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract. The tax due on any additional consideration received by the seller is paid to the county at:

(i) The time of termination;

(ii) The time that all of the consideration due to the seller has been paid and the transaction is completed except for delivery of the deed to the buyer; or

(iii) The time when the buyer exercises an option to purchase the property.

For further information regarding mineral rights and mining claims, see WAC 458-61A-112.

(c) In all other cases, the date of sale will be presumed to be the date shown on the instrument. A taxpayer alleging a date of sale other than the instrument date has the burden of proving that delivery of title or ownership of the property in exchange for consideration occurred on the date alleged.

(3) **Interest.** Payment of the real estate excise tax is due on the date of sale. If the tax is not paid within one month of the date of sale, interest will be imposed on the total amount of the unpaid tax (both the state and local components) from the date of sale to the date of full payment. RCW 82.45.100 (1) and 82.46.010(5). Interest is calculated on a monthly basis with a full month's interest accruing at the beginning of each month. A list of annual interest rates is available on the department's web site at [dor.wa.gov](http://dor.wa.gov).

(a) Interest is computed in accordance with the provisions of RCW 82.32.050(2). The interest rate is adjusted annually on January 1. The rate applied to any given month or portion of a month is the annual variable interest rate in effect at the beginning of that month, divided by twelve. Any interest imposed for a month or portion of a month that starts in December will be imposed at the interest rate effective in December, even though the interest rate may change on January 1. For example:

(i) Tyler sold real property located in Mayberry to Dustin on April 20, 2004. Tyler does not file a Real Estate Excise Tax Affidavit until August 15, 2004, at which time he pays \$1,530 in tax. The interest rate for 2004 is 4%, and interest is due on the transfer from April 20, 2004, through August 15, 2004, the date the tax was paid. Interest would be due as follows:

April 20 to May 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
May 21 to June 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
June 21 to July 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
July 21 to August 15, 2004	\$1,530 tax at 0.33% per month	\$5.05
Total interest due with August 15, 2004 payment		\$20.20

In this example, note that a full month's interest applies from July 21 to August 15, 2004, even though it is less than a full month.

(ii) Tara sells her house in Sun City to Chris on March 5, 2004. Real estate excise tax of \$1,780 is due on April 5, 2004, but is not paid until June 16, 2004. Interest applies from March 5, 2004, through June 16, 2004, the date of full payment. Again, a full month's interest applies from June 5 to June 16, 2004, even though it is less than a full month.

March 5 to April 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
April 5 to May 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
May 5 to June 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
June 5 to June 16, 2004	\$1,780 tax at 0.33% per month	\$5.87
Total additional interest due with June 16, 2004 payment		\$23.48

(b) When interest must be calculated in a shorter month that does not have a day corresponding to the original date of sale, interest is computed on the first day of the following calendar month.

For example, Kevin sells land located in unincorporated Sparkle County to Jim and Anita on January 30, 2004. Tax of \$3,560 is due on February 28, 2004. Since February has only twenty-eight days (assuming it is not a leap year) and February 28 most closely corresponds to the January 30 date of sale. The tax is not paid until May 10, 2004. The interest is computed as follows:

January 30 to February 28, 2004	\$3,560 tax at 0.33% per month	\$11.75
March 1 to March 30, 2004	\$3,560 tax at 0.33% per month	\$11.75
March 31 to April 30, 2004	\$3,560 tax at 0.33% per month	\$11.75
May 1 to May 10, 2004	\$3,560 tax at 0.33% per month	\$11.75
Total interest due with May 10, 2004 payment		\$47.00

(4) **Delinquent penalty.** If payment of real estate excise tax is not received by the county within one month of the date of sale, a delinquent penalty is imposed on the total amount of the unpaid tax. RCW 82.45.100(2) and 82.46.010(5).

(a) If tax is not paid:

(i) Within one month of the date of sale, a penalty of five percent of the amount of the tax will be added to the tax due;

(ii) Within two months of the date of sale, a penalty of ten percent shall be added to the tax due; and

(iii) Within three months of the date of sale, a penalty of twenty percent will be added to the tax due.

(b) Penalties are assessed against the seller only and will not be included in a lien arising under RCW 82.45.070.

(5) **State assessment penalty.** Any tax determined to be due and assessed by the department will include an assessment penalty of five percent of the tax assessed by the department. RCW 82.32.090(2).

(a) If payment of the tax assessment is not received by the department by the due date specified in the notice, or any extension thereof, a penalty of fifteen percent of the amount of the tax under this subsection will be assessed; and

(b) If payment of the tax assessment is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, a penalty of twenty-five percent of the amount of the tax under this subsection will be assessed; and

(c) This penalty will be no less than five dollars.

(6) **Evasion penalty.**

(a) The department may add a penalty equal to fifty percent of the underpaid excise tax due on transfers where an intent to evade the payment of the excise tax is demonstrated.

(b) An "intent to evade" includes, but is not limited to, knowingly stating a false sales price or knowingly claiming a tax exemption for which the transfer does not qualify.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-306, filed 11/16/05, effective 12/17/05.]

## Title 468 WAC

# TRANSPORTATION, DEPARTMENT OF

(Formerly: Highway Commission, etc.)

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### Chapter 468-38 WAC

## VEHICLE SIZE AND WEIGHT—HIGHWAY RESTRICTIONS—EQUIPMENT

### WAC

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468-38-100	Pilot/escort vehicle and operator requirements.		Flags. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-140, filed 8/20/82. Formerly WAC 468-38-200. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-140, filed 12/20/78. Formerly WAC 252-24-210.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-155.
468-38-120	Transport of extra-legal manufactured housing.		
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468-38-290	Farm implements.		
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468-38-420	Bridge restrictions.		
<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>			
468-38-010	Three-vehicle combinations. [Statutory Authority: RCW 46.44.090. 83-16-018 (Order 39, Resolution No. 195), § 468-38-010, filed 7/25/83; 82-18-010 (Order 31, Resolution No. 156), § 468-38-010, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-010, filed 12/20/78. Formerly WAC 252-24-010.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090.	468-38-180	Brakes. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-180, filed 8/20/82. Formerly WAC 468-38-400. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-180, filed 12/20/78. Formerly WAC 252-24-309.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-155.
468-38-020	Temporary additional tonnage permits. [Statutory Authority: RCW 46.44.090. 94-07-054 (Order 142), § 468-38-020, filed 3/11/94, effective 3/11/94; 85-22-002 (Order 50, Resolution No. 253), § 468-38-020, filed 10/24/85; 82-18-010 (Order 31, Resolution No. 156), § 468-38-020, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-020, filed 12/20/78. Formerly WAC 252-24-020.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-080 (part).	468-38-190	Signs. [Statutory Authority: RCW 46.44.090. 92-22-074 (Order 132), § 468-38-190, filed 11/2/92, effective 12/3/92. Statutory Authority: RCW 46.44.090 and 47.01.071. 91-10-022 (Order 70), § 468-38-190, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-190, filed 8/20/82. Formerly WAC 468-38-240. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-190, filed 12/20/78. Formerly WAC 252-24-312.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-155.
468-38-040	Special log tolerance transportation permits. [Statutory Authority: RCW 46.44.090. 89-23-110 (Order 68), § 468-38-040, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-040, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-040, filed 12/20/78. Formerly WAC 252-24-040.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090.	468-38-200	Safety chains and devices. [Statutory Authority: RCW 46.44.090. 89-23-110 (Order 68), § 468-38-200, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-200, filed 8/20/82. Formerly WAC 468-38-420. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-200, filed 12/20/78. Formerly WAC 252-24-315.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-155.
468-38-060	Liability of permittee. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-060, filed 8/20/82. Formerly WAC 468-38-160. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-060, filed 12/20/78. Formerly WAC 252-24-060.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-050.	468-38-220	Moves in convoy. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-220, filed 8/20/82. Formerly WAC 468-38-360. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-220, filed 12/20/78. Formerly WAC 252-24-321.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-175.
468-38-110	Escort vehicle requirements. [Statutory Authority: RCW 46.44.090. 03-20-070, § 468-38-110, filed 9/29/03, effective 10/30/03; 00-11-020 (Order 198), § 468-38-110, filed 5/9/00, effective 6/9/00; 99-08-025 (Order 191), § 468-38-110, filed 3/30/99, effective 4/30/99; 98-16-048 (Order 179), § 468-38-110, filed 7/31/98, effective 8/31/98; 82-18-010 (Order 31, Resolution No. 156), § 468-38-110, filed 8/20/82. Formerly WAC 468-38-190. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-110, filed 12/20/78. Formerly WAC 252-24-110.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-100.	468-38-230	Days on which permit movements are prohibited. [Statutory Authority: RCW 46.44.090. 98-24-024 (Order 185), § 468-38-230, filed 11/23/98, effective 12/24/98; 92-22-074 (Order 132), § 468-38-230, filed 11/2/92, effective 12/3/92; 89-23-110 (Order 68), § 468-38-230, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-230, filed 8/20/82. Formerly WAC 468-38-260. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-230, filed 12/20/78. Formerly WAC 252-24-324.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-175.
468-38-130	Lights—Stop and turn signals. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-130, filed 8/20/82. Formerly WAC 468-38-410. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-130, filed 12/20/78. Formerly WAC 252-24-200.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-155.	468-38-235	Commuter traffic restrictions. [Statutory Authority: RCW 46.44.090. 92-22-074 (Order 132), § 468-38-235, filed 11/2/92, effective 12/3/92; 84-04-011 (Order 40, Resolution No. 210), § 468-38-235, filed 1/20/84; 82-
468-38-135	Transportation of radioactive or hazardous materials. [Statutory Authority: RCW 47.01.270, 47.48.010 and		

- 18-010 (Order 31, Resolution No. 156), § 468-38-235, filed 8/20/82. Formerly WAC 468-38-300.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-175.
- 468-38-240 Cargo prohibition on reversible lane roadways. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-240, filed 8/20/82. Formerly WAC 468-38-070. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-240, filed 12/20/78. Formerly WAC 252-24-327.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-175.
- 468-38-250 Days on which permits are issued. [Statutory Authority: RCW 46.44.090. 03-02-057, § 468-38-250, filed 12/27/02, effective 1/1/03; 89-23-110 (Order 68), § 468-38-250, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-250, filed 8/20/82. Formerly WAC 468-38-270. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-250, filed 12/20/78. Formerly WAC 252-24-330.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-050.
- 468-38-260 Night-time movements. [Statutory Authority: RCW 46.44.090. 98-12-063 (Order 177), § 468-38-260, filed 6/1/98, effective 6/1/98; 92-22-074 (Order 132), § 468-38-260, filed 11/2/92, effective 12/3/92. Statutory Authority: RCW 46.44.090 and 47.01.071. 91-10-023 and 91-10-054 (Orders 71 and 71A), § 468-38-260, filed 4/23/91 and 4/29/91, effective 5/24/91 and 5/30/91. Statutory Authority: RCW 46.44.090. 89-23-110 (Order 68), § 468-38-260, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-260, filed 8/20/82. Formerly WAC 468-38-290. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-260, filed 12/20/78. Formerly WAC 252-24-333.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-175.
- 468-38-300 Drawbar—Towlines. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-300, filed 8/20/82. Formerly WAC 468-38-430. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-300, filed 12/20/78. Formerly WAC 252-24-345.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-155.
- 468-38-310 Adverse weather. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-310, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-310, filed 12/20/78. Formerly WAC 252-24-348.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-095.
- 468-38-320 Enforcement officer may restrict movements. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-320, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-320, filed 12/20/78. Formerly WAC 252-24-351.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-095.
- 468-38-330 Consideration of traveling public. [Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-330, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-330, filed 12/20/78. Formerly WAC 252-24-354.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090.
- 468-38-340 Speed limits. [Statutory Authority: RCW 46.44.090. 03-03-035, § 468-38-340, filed 1/10/03, effective 1/10/03; 82-18-010 (Order 31, Resolution No. 156), § 468-38-340, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-340, filed 12/20/78. Formerly WAC 252-24-357.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-095.
- 468-38-350 Lane of travel. [Statutory Authority: RCW 46.44.090. 89-23-110 (Order 68), § 468-38-350, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-350, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-350, filed 12/20/78. Formerly WAC 252-24-360.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090.
- 468-38-390 Winter road restrictions. [Statutory Authority: RCW 46.44.090. 02-06-106, § 468-38-390, filed 3/5/02, effective 4/5/02; 92-22-074 (Order 132), § 468-38-390, filed 11/2/92, effective 12/3/92; 89-23-110 (Order 68), § 468-38-390, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-390, filed 8/20/82. Formerly WAC 468-38-280. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-390, filed 12/20/78. Formerly WAC 252-24-372.] Repealed by 05-04-053, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090. Later promulgation, see WAC 468-38-095.

**WAC 468-38-001 Purpose and scope. What is the purpose and scope of this administrative code chapter for vehicle size and weight?** (1) This chapter provides rules necessary for the implementation of certain sections of chapter 46.44 RCW, to include the issuance of special permits that allow vehicles, or combinations of vehicles, to move in a legal or extra-legal configuration on the public highways. The chapter also includes rules on safety and operations as they relate to the permitting of extra-legal configurations.

(2) The chapter avoids, where possible, the restating of revised code and therefore should be used in conjunction with the revised code.

(3) The chapter has been written in a "question and answer" format to enhance communication with users.

[Statutory Authority: RCW 46.44.090. 05-04-053, § 468-38-001, filed 1/28/05, effective 2/28/05.]

**WAC 468-38-005 Definitions. What vehicle size and weight words and phrases are used commonly in addition to those codified in chapter 46.04 RCW?**

**A-dolly:** A converter dolly that is towed from a single hitch at the center line of the tow vehicle and contains the lower half of the fifth wheel assembly that when connected by kingpin to a semi-trailer converts the combined configuration into a full trailer.

**A-train double:** A combination of vehicles composed of a tractor, a semi-trailer and either an A-dolly and a semi-trailer or a full trailer attached to the rear of the forward semi-trailer as if an A-dolly were used.

**Axle:** The common axis of rotation of one or more wheels, either power-driven or freely rotating, in one or more segments in the same transverse plan. (Expanded from the definition in chapter 46.04.060 RCW.)

**Axle group:** Any set of two or more parallel axles associated with a single vehicle or vehicle combination.

**Axle group weight:** The part of the gross vehicle weight transmitted to the highway by the defined axle group.

**Axle spacing (spread):** The longitudinal distance between the centers of the foremost and rearmost axles of an

axle group measured from center to center of the defined axles.

**B-train double:** A combination of vehicles composed of a tractor, a semi-trailer and a second semi-trailer connected by kingpin to the lower half of a fifth wheel assembly mounted on the rear of the forward semi-trailer.

**C-dolly:** A converter dolly that is equipped with a single axle that is self-steering, towed from two hitches located in a horizontal transverse line on the towing unit, and is so designed that when the trailer converter dolly is coupled to a towing trailer, the trailer converter dolly cannot pivot horizontally with respect to the towing trailer.

**Axle spacing report:** A report stating the maximum amount of weight a vehicle, or vehicle combination, can carry, both legally and under permit, based on the number of axles, the axle spacings, and the number and sizes of tires on the vehicle, or vehicle combination.

**Combination length:** The total length of a combination of vehicles, i.e., truck-tractor—semi-trailer—trailer combination, measured from front extremity of the first vehicle to the rear extremity of the last vehicle, including the connecting space between vehicles and any overhanging load.

**Combined trailer length:** The total length of a combination of trailers measured from the front extremity of the first trailer to the rear extremity of the last trailer including the connecting space and any overhanging load.

**Converter dolly:** A vehicle unit that is designed, usually with the bottom half of a fifth wheel assembly, to convert a semi-trailer with kingpin into a full trailer.

**C-train double:** A combination of vehicles composed of a tractor, a semi-trailer, a C-dolly and a second semi-trailer.

**Daylight hours:** One-half hour before sunrise until one-half hour after sunset.

**Extra-legal vehicle:** A vehicle, laden or unladen, which exceeds legal dimensions and/or weights and operates on highways by permit.

**Gross weight:** The weight of a vehicle and/or combination of vehicles plus the weight of any load thereon.

**Height:** The total vertical dimension of a vehicle above the ground surface including any load or appurtenance.

**Length:** The total longitudinal dimension of a single vehicle, vehicle combination (see combination length), or individual trailer or semi-trailer. Trailer length is measured from the front of the cargo-carrying unit to its rear, exclusive of all overhangs from safety or energy efficiency devices (see also measurement exclusive devices). Length of a loaded trailer must include any overhangs of load when determining compliance with length limits or the need for a special permit.

**Longer combination vehicle:** A combination of truck tractor, semi-trailer, and trailer that exceeds legal length dimensions and operates on highways by permit for transporting reducible loads.

**Maximum off track:** The maximum difference in the path created by the center of the steering axle and the center of the rearmost axle of the vehicle or vehicle combination during the negotiation of a turn.

**Multilane highway:** A highway with two or more lanes of travel in the same direction.

**Measurement exclusive devices:** Certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed to carry cargo.

**National network:** Those interstate and other federal-aid primary highways on which commercial vehicles of the dimensions authorized by the Surface Transportation Assistance Act of 1982 are allowed to operate.

**Night:** Night means one-half hour after sunset to one-half hour before sunrise.

**Nondivisible load:** A load that cannot be readily or reasonably dismantled and is reduced to a minimum practical size and weight. Portions of a load can be detached and reloaded on the same hauling unit when the separate pieces are necessary to the operation of the machine or equipment which is being hauled: Provided, That the arrangement does not exceed permit limits for the configuration without the reloaded pieces. The federal definition of nondivisible load to be used for vehicles operating on the interstate is as follows: Any load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would: Compromise the intended use of the vehicle, destroy the value of the load or vehicle, require more than eight work hours to dismantle using appropriate equipment.

**Permit:** A written or electronic authorization to:

- (a) Move or operate a vehicle, or combination of vehicles, on a highway;
- (b) With or without a load;
- (c) Of size and/or weight exceeding the limits prescribed for vehicles in regular operation.

**Pilot/escort vehicle:** A motor vehicle used for the express purpose as a warning and guide vehicle for extra-legal vehicles.

**Pounds per inch of tire width:** A measure of load restriction based on rated tire size. The pounds per inch of tire width are determined by dividing the weight carried on the axle group by the number of tires in the group and dividing again by the manufacturer's rated tire width as indicated on the sidewall of the tire.

**Rear overhang:** The distance from the center of the last axle to the end of the load, or portion of the vehicle whichever is longer.

**Regional permit:** Permits issued for interstate movement of certain nondivisible overweight and/or oversize vehicles and/or loads on highways designated by the jurisdictions participating in the *"Western Regional Agreement for the Issuance of Permits for Overweight and/or Oversize Vehicles and/or Loads Involved in Interstate Travel."*

**Regular operation:** The movement over highways of motor vehicles with dimensions and weights specified by state and federal codes.

**Retractable axle:** An axle that can be separately raised and lowered by the driver of the vehicle but may not have its weight bearing capacity regulated from within reach of the driver's compartment. Also known as "lift axle" and "booster axle," or more formally known as a "variable load suspension" (VLS) axle.

**Rocky mountain double:** A combination of vehicles including a truck-tractor pulling a long semi-trailer and a shorter trailer.



**Single axle:** An assembly of two or more wheels whose centers are in one transverse vertical plane and which are transmitting weight to the highway.

**Single unit:** A motor vehicle with no attached vehicles, i.e., truck, bus, truck-tractor.

**Steering axle:** The axle or axles on the front of a motor vehicle that are activated by the operator to directly accomplish guidance or steering of the vehicle and/or a combination of vehicles.

**Superload:** A superload is any load that would require special analysis and approval by one or more state permit offices because of dimensions or weight. Criteria for superloads in Washington state are found in WAC 468-38-405.

**Tandem axle:** Any two consecutive single axles whose centers may be included between parallel transverse vertical planes spaced at least four feet but not more than eight feet apart, extending across the width of the vehicle, articulating from a common attachment, or designed to automatically equalize the load between the two axles. This working definition is extrapolated from RCW 46.44.041.

**Tote:** Common term for a motor vehicle used to transport manufactured housing.

**Tridem axle:** Any three consecutive single axles whose extreme centers may be included between parallel transverse vertical planes spaced not more than twelve feet apart, extending across the width of the vehicle, and are articulated from a common attachment to the vehicle, or are designed to automatically equalize the load between the three axles.

**Truck-tractor:** A motor vehicle used primarily for pulling other vehicles but not specifically constructed to carry a load other than a part of the weight of the vehicle and load being pulled. This vehicle may include a small freight compartment (also referred to as a dromedary box), deck or plate not more than eight feet in length used for carrying a load. Federal rule allows the interstate use of a vehicle with a dromedary box only if the vehicle was in operation prior to December 1, 1982, proof to be provided by the vehicle operator. This working definition was extrapolated from RCW 46.04.655, 46.44.037 and Code of Federal Regulation, 23 CFR 658.13(f).

**Trunnion axle:** An axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle, connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

**Trunnion axle group:** Two or more consecutive trunnion axles, that are individually attached to, and/or articulated from, the vehicle, and may include a weight equalizing suspension system.

**Turnpike double:** A combination of vehicles including a truck-tractor pulling a long semi-trailer and an additional long trailer.

**Wide base tire:** A tire whose nominal section (sidewall to sidewall) width, as identified by tire nomenclature, is over fourteen inches.

**Width:** The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding approved safety devices and tire bulge due to load.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-005, filed 1/28/05, effective 2/28/05.]

**WAC 468-38-030 Temporary additional tonnage permits. (1) What vehicle type or vehicle combination is eligible for the temporary additional tonnage permit provided in RCW 46.44.095?** Temporary additional tonnage permits may be issued to the following types of vehicles: Three or more axle single unit trucks; three or more axle truck-tractors, including those equipped with a legal dromedary area; and a truck-tractor with two axles pulling double trailers.

**(2) What is the maximum amount of additional tonnage that can be purchased?** Tonnage may be purchased up to the legal capacity of the vehicle(s), not to exceed one hundred five thousand five hundred pounds, based on number of axles and axles spacings (RCW 46.44.041), and number and size of tires.

**(3) Are temporary additional tonnage permits ever issued to the trailer?** Temporary additional tonnage permits are only issued to power units.

**(4) Can a department of licensing trip permit be used in lieu of licensed tonnage, to meet the forty thousand pound (single unit) or eighty thousand pound (combination) requirement needed before an additional tonnage permit can be issued?** Yes, as provided for in RCW 46.16-160.

**(5) Can the additional tonnage permit extend beyond the valid license period?** The additional tonnage permit may not extend beyond the valid license period. In the case where department of licensing trip permits are used in lieu of licensed tonnage, a minimum of two three-day trip permits must be used because the additional tonnage permit is sold for a minimum of five days. Only three trip permits can be issued to a vehicle within a thirty-day period, allowing for a maximum of nine days of additional tonnage in any thirty-day period.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-030, filed 1/28/05, effective 2/28/05; 94-07-054 (Order 142), § 468-38-030, filed 3/11/94, effective 3/11/94; 89-23-110 (Order 68), § 468-38-030, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-030, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order I, Resolution No. 13), § 468-38-030, filed 12/20/78. Formerly WAC 252-24-030.]

**WAC 468-38-050 Special permits for extra-legal loads. (1) When can the department or its agents issue a permit for an extra-legal move?** The following general conditions must be met:

(a) Application has been made in written or electronic format to the department or its agents (oral application is acceptable in face-to-face over-the-counter transactions) and the applicant has shown there is good cause for the move.

(b) The applicant has shown the configuration is eligible for a permit.

(c) The vehicle, vehicle combination and/or load has been thoroughly described and identified.

(d) The points of origin and destination and the route of travel have been stated and approved.

(e) The move has been determined to be consistent with public safety. The permit applicant has indicated that appropriate safety precautions will be taken as required by state law, administrative rule or specific permit instruction.

**(2) How must a vehicle(s), including load, be configured to be eligible for a special permit to move on the state**

**highways?** A vehicle(s), including load, that can be readily or reasonably dismantled must be reduced to a minimum practical size and weight. Portions of a load may be detached and reloaded on the same hauling unit when the separate pieces are necessary to the operation of the machine or equipment which is being hauled: Provided, That the arrangement does not exceed special permit limits. Detached and reloaded pieces must be identified on the special permit.

**(3) Are there any exceptions to dismantling the configuration?** Yes. A vehicle, vehicle combination or load may stay assembled if by separating it into smaller loads or vehicles the intended use of the vehicle or load would be compromised (i.e., removing the boom from a self-propelled crane), the value of the load or vehicle would be destroyed (i.e., removing protective packaging), and/or it would require more than eight work hours to dismantle using appropriate equipment. The permit applicant has the burden of proof in seeking an exception. Configurations that fall under the exception must not exceed special permit limits.

**(4) What does the applicant affirm when he/she signs the permit?** The permit applicant affirms:

(a) The vehicle or vehicle combination and operator(s) are properly licensed to operate and carry the load described in accordance with appropriate Washington law and administrative code.

(b) They will comply with all applicable requirements stipulated in the permit to move the extra-legal configuration.

(c) The move (vehicle and operator) is covered by a minimum of seven hundred and fifty thousand dollars liability insurance: Provided, That a noncommercial move (vehicle and operator) shall have at minimum three hundred thousand dollars liability insurance for the stated purpose.

(d) Except as provided in RCW 46.44.140, the original permit (permit with original signature) or certified copy will be carried on the power unit at all times while the permit is in effect. Moves made by designated emergency vehicles, receiving departmental permit authorization telephonically, are exempt from this requirement.

**(5) What specific responsibility and liability does the state assign to the permit applicant through the special permit?** Permits are granted with the specific understanding that the permit applicant shall be responsible and liable for accidents, damage or injury to any person or property resulting from the operation of the vehicle covered by the permit upon public highways of the state. The permit applicant shall hold blameless and harmless and shall indemnify the state of Washington, department of transportation, its officers, agents, and employees against any and all claims, demands, loss, injury, damage, actions and costs of actions whatsoever, that any of them may sustain by reason of unlawful acts, conduct or operations of the permit applicant in connection with the operations covered by the permit.

**(6) When and where can a special permit be acquired?** The following options are available:

(a) Special permits may be purchased at any authorized department of transportation office or agency Monday through Friday during normal business hours.

(b) An application for a permit may be submitted by facsimile, including charge card information to an authorized location. The special permit will be issued and returned by facsimile subject to normal business hours.

(c) Companies that would like to self-issue permits for their own vehicles may apply to the department for this privilege. Department representatives will work with the company to determine if self-issuing is appropriate.

(d) The department will maintain and publish a list of authorized permit offices and agencies.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-050, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090 and 47.01.071, 91-10-023 (Order 71), § 468-38-050, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 46.44.090, 89-23-110 (Order 68), § 468-38-050, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-050, filed 8/20/82. Formerly WAC 468-38-150. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-050, filed 12/20/78. Formerly WAC 252-24-050.]

#### **WAC 468-38-070 Maximums and other criteria for special permits—Nondivisible. (1) Are there maximum dimensions established for moving nondivisible over-dimensional vehicles and/or loads?**

Yes. In all instances the general safety of the public is considered paramount and will ultimately govern over-dimensional moves. There are some general rules; however, physical barriers determine most maximums for over-dimensional moves. Over-dimensional maximums are addressed as follows:

(a) **Overwidth:** As stipulated in RCW 46.44.092, fourteen feet on any two-lane highway; twenty feet on any multiple-lane highway where a physical barrier serving as a median divider (i.e., jersey barrier, cyclone fence, guardrail, etc.) separates the oncoming and opposing traffic lanes; thirty-two feet on any multiple-lane undivided highway. Permits may be issued for widths in excess of the preceding limits when traveling on highway segments that by design can accommodate the greater width.

(b) **Overheight:** Any move involving height, especially permitted moves exceeding fourteen feet, are governed by the ability to clear overhead obstructions such as bridges, underpasses, wires, overhead signs, and other objects. The issuance of a permit does not insure the route to be free of overhead obstructions. It is the responsibility of the permit applicant to check, or prerun, the proposed route and provide for safe maneuvers around the obstruction or detours as necessary. Structures owned by the state should be reviewed with department field personnel to determine safe navigation of the move, including options for temporary removal of obstructions. Detours off the state route onto county or city roads require authorization from those jurisdictions. A traffic control plan (see WAC 468-38-405 (3)(d)) may be requested for approval by the department before a permit is issued.

(c) **Overlength:** Routes will be limited to over-dimensional moves based on ability to negotiate curves, interchanges, entrance and exit roadways and other obstacles.

**(2) Are there maximum weights established for moving nondivisible overweight vehicles and/or loads?** Yes. Weight maximums for the movement of a nondivisible load under special permit are established in RCW 46.44.091. In addition, tire loading for the movement of a nondivisible load is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire.

**(3) Are there maximums and/or other criteria established for the use of specific vehicle combinations when**

**moving over-dimensional nondivisible loads?** Yes. The maximums for specific vehicle combinations are as follows:

(a) **Truck-tractor pulling a semi-trailer or full trailer:** Trailers in excess of legal length and/or width dimensions, or the permitted length of fifty-six feet, shall not exceed the length or width of the nondivisible load being transported. The department may grant an exception when the added dimension is necessary to spread the weight of the load to comply with requirements established by the department to protect the infrastructure. Jeeps and/or boosters may be added to the trailer to help distribute weight as necessary. A "pusher" power unit may also be added to the configuration upon approval of the department. Jeeps, boosters and pusher power units will be considered part of the trailing unit plus load measurement.

(b) **Truck-tractor pulling semi-trailer and full trailer (or two semi-trailers in B-train configuration):** The combined trailer length, including the space between trailers, may not exceed sixty-one feet. This combination is limited to nondivisible loads not to exceed ten feet wide. Both trailers may carry a nondivisible load, with the widest load carried on the first trailer. Trailers in excess of legal width shall not exceed the width of the nondivisible load being transported. This combination may not carry overheight, overlength or overweight loads.

(c) **Truck and trailer:** There are two scenarios for this combination:

(i) **Both truck and trailer carrying loads:** The combined overall length of the combination when carrying a nondivisible overlength load must not exceed eighty-five feet. Any nondivisible overlength load is restricted to only one vehicle. The trailer may be loaded with the overhang entirely to the rear of the trailer, or the truck may be loaded with the overhang entirely to the front of the truck. Both truck and trailer may carry overwidth and overheight loads. The truck and/or trailer in this configuration may not carry an overweight nondivisible load.

(ii) **Unladen truck and trailer:** The unladen truck may be treated as a truck-tractor and the combination addressed as described in (a) of this subsection: Provided, That the truck-tractor is not carrying **any** load of any kind, and that its use as an unladen truck is specified on the special permit. The trailing unit is measured from the foremost point of the draw bar or load, whichever is greater, to the rearmost part of the trailer or load, whichever is greater. This combination may carry a nondivisible overweight load on the trailer. For example, an unladen dump truck may acquire a special permit to pull a tilt trailer with a dozer or backhoe where the trailer load causes the axles to exceed legal weight.

(4) **Can a vehicle, or vehicle combination, carry multiple pieces when using an over-dimensional nondivisible special permit?** Yes, under the following conditions:

(a) The vehicle(s) and load are transported at legal weights.

(b) The largest nondivisible piece(s) must be loaded to its practicable minimum. No single piece may create a dimension greater than the dimension it would create if loaded properly and carried by itself.

(c) Additional pieces may be added within the envelope dimension created by the largest piece(s) loaded to its practicable minimum. The envelope should be viewed as an imag-

inary cube with height, length and width defined by the extremities, regardless of shape, of the over-dimensional piece(s) and other legal dimensions as necessary. The department will provide an illustrative example upon request.

(5) **Are there any circumstances when an over-dimensional vehicle(s) can move a legal size load?** Yes, when the following conditions have been met:

(a) The vehicle(s) are making the move in conjunction with being in route to pick up a nondivisible load under special permit (front haul); or

(b) The vehicle(s) are making the move in conjunction with returning from a delivery of a nondivisible load under special permit (back haul); and

(c) The route traveled is the same route that would have been used if a legal load had not been moved; and

(d) The front haul or back haul is noted on the special permit used for the nondivisible move.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-070, filed 1/28/05, effective 2/28/05; 00-11-019 (Order 197), § 468-38-070, filed 5/9/00, effective 6/9/00; 98-21-019 (Order 183), § 468-38-070, filed 10/13/98, effective 11/13/98; 98-09-029 (Order 172), § 468-38-070, filed 4/10/98, effective 5/11/98; 96-23-003, § 468-38-070, filed 11/7/96, effective 12/8/96; 83-16-018 (Order 39, Resolution No. 195), § 468-38-070, filed 7/25/83; 82-18-010 (Order 31, Resolution No. 156), § 468-38-070, filed 8/20/82. Formerly WAC 468-38-170. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-070, filed 12/20/78. Formerly WAC 252-24-080.]

**WAC 468-38-071 Maximums and other criteria for special permits—Divisible.** (1) **Can a vehicle, or vehicle combination, acquire a permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?** Yes. There are some very specific configurations that can receive extra length or extra height when carrying a divisible load.

(2) **What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load,

whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul his own hay from his own fields to feed his own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(3) **Are there any measurement exclusive devices related to these permits?** Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three inches beyond the width of a vehicle. The examples are not all inclusive.

(4) **Are overweight permits available for divisible loads?** The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

(a) Weight on axles in excess of what is allowed in RCW 46.44.041;

(b) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(c) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and

(d) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-071, filed 1/28/05, effective 2/28/05; 98-21-019 (Order 183), § 468-38-071, filed 10/13/98, effective 11/13/98; 96-23-003, § 468-38-071, filed 11/7/96, effective 12/8/96.]

**WAC 468-38-073 Measurement exclusive devices. (1) What are the criteria for being a measurement exclusive device?** Generally, measurement exclusive devices are vehicle appurtenances designed and used for reasons of safety, aerodynamics, or efficient vehicle operation. A measurement exclusive device must not carry property, create a space that property could occupy outside of legal or permitted dimen-

sions, or exceed the specific dimensional limitations stated in this section.

(2) **What devices at the front of a single unit vehicle, or power unit in a vehicle combination, are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the front of a single unit vehicle or power unit in a vehicle combination:

(a) Resilient bumpers that do not extend more than six inches from the vehicle;

(b) A fixed step up to three inches deep at the front of an existing automobile transporter until April 29, 2005. It will be the responsibility of the operator of the unit to prove that the step existed prior to April 29, 2002. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. After April 29, 2005, the step shall no longer be excluded from a vehicle's length.

(3) **What devices at the front of a semi-trailer or trailer are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the front of a semi-trailer or trailer:

(a) A device at the front of a trailer chassis to secure containers and prevent movement in transit;

(b) A front coupler device on a semi-trailer or trailer used in road and rail intermodal operations;

(c) Aerodynamic devices, air deflector;

(d) Air compressor;

(e) Certificateholder (manifest box);

(f) Door vent hardware;

(g) Electrical connector;

(h) Gladhand (air hose connectors joining tractor to trailer);

(i) Handhold;

(j) Hazardous materials placards and holders;

(k) Heater;

(l) Ladder;

(m) Nonload carrying tie-down devices on automobile transporters;

(n) Pickup plate lip (plate at front of trailer to guide fifth wheel under trailer);

(o) Pump offline on tank trailer;

(p) Refrigeration unit;

(q) Removable bulkhead;

(r) Removable stake;

(s) Stabilizing jack (antinosedive device);

(t) Stake pocket;

(u) Step;

(v) Tarp basket;

(w) Tire carrier; and

(x) Uppercoupler.

(4) **What devices at the rear of a single unit vehicle, semi-trailer or trailer are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the rear of a semi-trailer or trailer:

(a) Aerodynamic devices that extend up to a maximum of five feet beyond the rear of the vehicle, provided such devices have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a

vehicle so equipped from the rear, and provided also that they do not obscure tail lamps, turn signals, marker lamps, identification lamps, or any other required safety devices, such as hazardous materials placards or conspicuity markings (i.e., reflective tape);

- (b) Handhold;
- (c) Hazardous materials placards and holder;
- (d) Ladder;
- (e) Loading and unloading device not to exceed two feet;
- (f) Pintle hook;
- (g) Removable stake;
- (h) Splash and spray suppression device;
- (i) Stake pocket; and
- (j) Step.

**(5) What devices at the side of a vehicle are excluded from width determinations?** The following devices have been identified as measurement exclusive, not to exceed three inches from the side of the vehicle, when determining width of a vehicle:

- (a) Corner cap;
- (b) Handhold for cab entry/egress;
- (c) Hazardous materials placards and holder;
- (d) Lift pad for trailer on flatcar (piggyback) operation;
- (e) Load induced tire bulge;
- (f) Rain gutter;
- (g) Rear and side door hinge and protective hardware;
- (h) Rearview mirror;
- (i) Side marker lamp;
- (j) Splash and spray suppressant device, or component thereof;

(k) Structural reinforcement for side doors or intermodal operation (limited to one inch from the side within the three-inch maximum extension);

- (l) Tarping system for open-top cargo area;
- (m) Turn signal lamp;

(n) Movable device to enclose the cargo area of a flatbed semi-trailer or trailer, usually called "tarping system," where no component part of the system extends more than three inches from the sides or back of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of a tarping system, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 CFR 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to one hundred eight inches wide if properly centered so that neither side extends more than three inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 CFR 393.106 is load bearing and thus limited to one hundred two inches in width. The "wings" designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

(o) Tie-down assembly on platform trailer;

(p) Wall variation from true flat; and

(q) Weevil pins and sockets on a platform or low-bed trailer (pins and sockets located on both sides of a trailer used to guide winch cables when loading skid mounted equipment).

**(6) Are there weight measurement exclusive devices?**

No. All devices, regardless of purpose, must be included in the combined vehicle weight and subject to the weight restrictions provided in chapter 46.44 RCW and as further defined in chapter 468-38 WAC.

**(7) Can exclusion allowances be combined to create a larger allowance (i.e., adding a five-foot aerodynamic device to a two-foot loading/unloading device for a total exclusion of seven feet)?** No. Each exclusion allowance is specific to a device and may not be combined with the exclusion allowance for another device.

**(8) Can a device receive exclusion if it is not referenced in law or administrative rule?** If the device meets the criteria in subsection (1) of this section, a request for measurement exclusion may be made to the administrator for commercial vehicle services. If approved for an exclusion allowance, the administrator will provide the requestor a written authorization.

[Statutory Authority: RCW 46.44.090 and 2005 c 189. 05-12-002, § 468-38-073, filed 5/18/05, effective 6/18/05.]

**WAC 468-38-075 Special permit exemptions for authorized vehicles and/or loads. (1) What special permit requirements/restrictions are exempted for an authorized overlength vehicle and/or load?** The following exemptions for authorized overlength vehicles and/or loads include:

(a) The requirement to display "OVERSIZE LOAD" signs (WAC 468-38-155(7));

(b) The requirement to cease operation on routes governed by commuter hour restrictions, and during holiday travel restrictions (WAC 468-38-175 (1) and (2));

(c) The requirement that approved night movement be stated on the special permit (WAC 468-38-175(3)); and

(d) The restriction for movement during winter road conditions when the following sign is displayed: "TRACTION ADVISORY/OVERSIZE VEHICLES PROHIBITED" (WAC 468-38-095(8)). In addition to being an authorized vehicle, the vehicle must also comply with WAC 204-24-050 Use of tire chains or other traction devices.

**(2) What overlength vehicles and/or loads are authorized to receive the exemptions?** The following vehicles and/or loads are exempted from the requirements/restrictions identified in subsection (1) of this section:

(a) A truck-tractor/semi-trailer combination where the single trailer does not exceed fifty-six feet, including load;

(b) A truck-tractor/semi-trailer/trailer combination where the combined trailer length does not exceed sixty-eight feet, including load;

(c) A vehicle or vehicle combination with a front overhang not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria set in RCW 46.37.517), and/or a rear overhang not exceeding fifteen feet;

(d) A single unit fixed load vehicle not exceeding an overall length of forty-five feet including the allowable overhangs in (c); and

(e) A nondivisible load, including the trailer upon which it is carried, not exceeding sixty-one feet.

(3) **Are there exemptions for permitted vehicles exceeding legal height or width?** Yes. A vehicle or vehicle combination that does not exceed a defined envelope of twelve feet wide, fourteen feet six inches high and an overall combined length of one hundred feet is exempt from the restriction on movement at night, as referenced in subsection (1)(c) of this section.

(4) **Are there exemptions for vehicles operating with an overweight special permit?** Yes. A vehicle or vehicle combination operating on a special permit for overweight only, in compliance with all legal dimension limits, is exempt from all of the requirements/restrictions included in subsection (1)(a) through (d) of this section: Provided, That the vehicle or vehicle combination can maintain posted speed limits. This exemption may be used in conjunction with the height and width exemption in subsection (3) of this section.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-075, filed 1/28/05, effective 2/28/05; 02-06-106, § 468-38-075, filed 3/5/02, effective 4/5/02; 94-07-055 (Order 143), § 468-38-075, filed 3/11/94, effective 3/11/94; 93-21-008 (Order 139), § 468-38-075, filed 10/8/93, effective 11/8/93.]

**WAC 468-38-080 Emergency load restrictions for heavy vehicles.** (1) **When would the department implement a load restriction?** Pursuant to RCW 46.44.080, when the department determines that an emergency road condition exists, a freeze thaw condition for example, and that vehicles with gross tire loadings exceeding acceptable limits will damage the highway or endanger other traffic using the highway, the department shall without delay restrict or close that highway segment temporarily to all vehicles or to a designated class of vehicle.

(2) **How will vehicle operators be notified of the restrictions?** Signs will be erected at each end of the closed/restricted highway segment, and at all intersecting state highways. Depending upon conditions, one of the following signs will be in use:

(a)

EMERGENCY LOAD RESTRICTIONS			
CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.00	1800 lbs.	8-22.5	2250 lbs.
7.50	2250 lbs.	9-22.5	2800 lbs.
8.25	2800 lbs.	10-22.5	3400 lbs.
9.00	3400 lbs.	11-22.5	4000 lbs.
10.00	4000 lbs.	11-24.5	4000 lbs.
11.00	4500 lbs.	12-22.5	4500 lbs.
12.00 & over	4500 lbs.	12-24.5 & over	4500 lbs.

(b)

SEVERE EMERGENCY LOAD RESTRICTIONS			
CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.00	1800 lbs.	8-22.5	1800 lbs.

SEVERE EMERGENCY LOAD RESTRICTIONS			
CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.50	1800 lbs.	9-22.5	1900 lbs.
8.25	1900 lbs.	10-22.5	2250 lbs.
9.00	2250 lbs.	11-22.5	2750 lbs.
10.00	2750 lbs.	11-24.5	2750 lbs.
11.00 & over	3000 lbs.	12-22.5 & over	3000 lbs.

Note: The department recommends that carriers check the department's web site [www.wsdot.wa.gov/freight/mcs](http://www.wsdot.wa.gov/freight/mcs) for possible advance warning on road restrictions.

(3) **Are the tires identified in the aforementioned table the only tires authorized for use under permit when the signs in subsection (2) of this section are posted?** During periods when "emergency load restrictions" or "severe emergency load restrictions" are in effect, only vehicles equipped with tires required by the table in subsection (2) of this section may operate under permit.

(4) **Will there be an allowance for any second axle that is suspended from the frame of a vehicle independent of the regular drive axle, commonly known as a "rigid trail axle"?** No.

(5) **Will there be an allowance for more than two tires on the steering, or front, axle?** No.

(6) **What restrictions are there on axle load distributions?** The load distribution on any axle must not load the tires on that axle in excess of the prescribed load listed in subsection (2) of this section: Provided, That a truck, truck-tractor, passenger bus or school bus having conventional 10:00 x 20 tires or 11:00 x 22.5 tires, or larger, may carry a maximum load of ten thousand pounds on the front axle over any highway placed under emergency load restrictions.

(7) **Is there a permitting process to allow necessary vehicles to use the restricted highway segment?** Permits may be issued by the department to allow the operation of school buses and vehicles transporting perishable commodities or commodities necessary for the health and welfare of local residents. These vehicles will be subject to specific weight and speed restrictions, as directed by the department.

(8) **Will a temporary additional tonnage permit supersede the restrictions?** Operators of vehicles that have been issued a temporary additional tonnage permit must comply with the posted restriction and related rules.

(9) **Can this rule supersede or modify any rule in force that has established a lower load limitation on a state highway bridge?** No.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-080, filed 1/28/05, effective 2/28/05; 82-18-010 (Order 31, Resolution No. 156), § 468-38-080, filed 8/20/82. Formerly WAC 468-38-130. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-080, filed 12/20/78. Formerly WAC 252-24-090.]

**WAC 468-38-095 Emergency road restrictions due to weather or other conditions.** (1) **Who has the authority to implement emergency procedures to restrict the movement of a vehicle(s) operating on state highways?** RCW 47.48.031 and 46.44.080 provide authority for the chief or another officer of the state patrol, or the secretary of transport-

tation or designee, to restrict vehicle movement by closing or restricting movement on a section(s) of state highway(s) to all vehicles or specific class of vehicles.

**(2) Under what conditions would a road restriction be put in place?** A restriction or closure may be put in place whenever the department or the state patrol believe that weather or other conditions have created a substantial risk to public safety.

**(3) How are the restrictions maintained?** The department and the state patrol shall exchange notices of conditions that require a restriction(s) or closure to be placed on the highway, and notices when conditions change that will allow the restriction to be terminated. Either the department or the state patrol, whichever agency can best respond to the condition, shall manually control traffic as needed until the restriction is terminated or until the department can install traffic control devices.

**(4) How will the notification of a restriction be communicated to the highway users?** The department and the state patrol have a joint responsibility to provide notice of both the placement and removal of highway restrictions/closures. Notices shall be provided to the news media, affected law enforcement agencies, and other appropriate organizations, both public and private. For areas requiring vehicles to apply tire chains, see subsection (8) of this section.

**(5) At what point does visibility play a factor in the movement of a vehicle operating under special permit?** Moves must not be made when visibility is reduced to one thousand feet or less. If visibility is reduced during transport, the vehicle or vehicle combination must clear the highway at the nearest safe location.

**(6) Can an individual move under special permit be restricted through enforcement intervention?** Yes. An enforcement officer, at his/her discretion, may require the driver of the permitted vehicle or vehicle combination to pull off of the highway when weather or other conditions become unsafe for further movement. The enforcement officer may direct or escort the permitted vehicle to a place of safety where it may be parked until the unsafe conditions abate.

**(7) Do vehicles carrying hazardous or radioactive cargo have greater opportunity of being affected by restrictions?** Yes. Due to the potential risks to the public, RCW 47.01.270 and 47.48.050 have provided the department and the state patrol with the specific authority to close a section(s) of the highway(s) to transporters of placarded radioactive or hazardous cargo. The basis for closure is the same as stated in subsection (2) of this section.

**(8) Who has authority to prohibit permitted vehicles from chain/approved traction device control areas, and how is this communicated?** The department and the state patrol may prohibit a vehicle, whether moving under special permit for oversize/overweight or not, from entering chain/approved traction device control areas. Prohibitions are put in place when it is determined the vehicle will experience difficulty in safely traveling the area. Traffic control signs will generally communicate prohibitions (i.e., "TRACTION ADVISORY/OVERSIZE VEHICLES PROHIBITED," "CHAINS REQUIRED ON ALL VEHICLES EXCEPT ALL WHEEL DRIVE," "VEHICLES OVER 10,000 GVWR CHAINS REQUIRED," etc.). In addition, specific vehicle combinations may be required to operate with specified traction devices (i.e., "TRACTORS

PULLING DOUBLE TRAILERS MUST CHAIN UP"). Also, refer to WAC 204-24-050 (2)(h) for a list of areas where sufficient tire chains must be carried on the vehicle(s) between November 1 and April 1 of each year.

**(9) What penalties are in place for vehicles moving in prohibited areas?** Movement into a restricted area when the vehicle is prohibited, or without the specified traction device, is a violation of the special permit, which is a traffic infraction, and subject to the penalties of RCW 46.44.105.

**(10) What responsibilities must the operator of a vehicle(s) operating under special permit, during winter road conditions, assume when signs or other traffic control devices are not present?** A vehicle, or vehicle combination, operating under special permit for oversize, must stop movement at the nearest safe location during periods when:

(a) Snow is falling to a degree that visibility is limited to less than one thousand feet; or

(b) Immediately following a severe storm when snow removal equipment is operating; or

(c) When fog or rain limits visibility to less than one thousand feet; or

(d) When compact snow and ice conditions require the use of chains.

Movement must not resume until conditions have abated and clearance obtained from the nearest department or state patrol office. Failure to stop is a violation of the permit and subject to the penalties of RCW 46.44.105.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-095, filed 1/28/05, effective 2/28/05.]

**WAC 468-38-100 Pilot/escort vehicle and operator requirements. (1) When is a pilot/escort vehicle(s) required to accompany an extra-legal vehicle or load?** A pilot/escort vehicle(s) must accompany an extra-legal load when:

(a) The vehicle(s) or load is over eleven feet wide. Two pilot/escort vehicles are required on two lane roads, one in front and one in back.

(b) The vehicle(s) or load is over fourteen feet wide. One escort vehicle is required at the rear of the movement on multilane highways.

(c) The vehicle(s) or load is over twenty feet wide. Two pilot/escort vehicles are required on multilane undivided highways, one in front and one in back.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length plus load of a tractor/trailer combination. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet. One pilot/escort vehicle is required at the rear of the movement on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet. One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load measured from the center of the rear axle exceeds one-third the total length of a single

unit vehicle with load. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches. One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all state highways and roads.

(i) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination.

(j) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator. A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties. Escort vehicle operators with a driver's license from a jurisdiction other than Washington state may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office. Washington state pilot/escort vehicle operator cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Assure availability of additional certified flag persons if stated as a condition of the oversize/overweight special permit.

(f) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(g) Check two-way communication system to ensure clear communications and predetermine the channel to be used.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement?** The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between pilot/escort vehicle and extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement?** The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the



extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

**(8) What kind of vehicle can be used as a pilot/escort vehicle?** In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck;

(b) Not exceed a maximum gross vehicle weight rating of fourteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; and

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle.

**(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?**

(a) A minimum of two flashing or rotating amber (yellow) lights, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prerunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

**(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?**

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

**(11) Can the pilot/escort vehicle carry passengers?** A pilot/escort vehicle may not contain passengers, human or animal, except for a certified individual in training status or necessary flag person.

**(12) Can the pilot/escort vehicle carry any other items, equipment, or load?** Yes, as long as the items, equipment or load have been properly secured: Provided, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator of the pilot/escort vehicle of the duties required by these rules.

**(13) Can a pilot/escort vehicle escort more than one extra-legal load at the same time?** No, unless the department determines there are special circumstances that have resulted in an express authorization on the special permit.

**(14) When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device

(pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit, or in rule. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. When not in the act of escorting an extra-legal move, or prunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

**(15) Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remain the same, specific rules may be modified to fit the situation.

[Statutory Authority: RCW 46.44.090. 05-04-053, § 468-38-100, filed 1/28/05, effective 2/28/05; 89-23-110 (Order 68), § 468-38-100, filed 11/22/89, effective 12/23/89; 82-18-010 (Order 31, Resolution No. 156), § 468-38-100, filed 8/20/82. Formerly WAC 468-38-180. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-100, filed 12/20/78. Formerly WAC 252-24-100.]

**WAC 468-38-120 Transport of extra-legal manufactured housing. (1) How many vehicles can be combined in the move of a manufactured home?** The vehicle combination is limited to two vehicles, a towing unit, sometimes referred to as a "toter," and the semi-trailer designed housing unit.

**(2) What are the dimensional limits of the combination?** While the overall combination is not limited by dimension, the following limits are established:

(a) **Length:** The length of the manufactured housing unit may not exceed seventy-five feet, including the length of the tongue.

(b) **Width:** The width of the manufactured housing unit must not exceed a box (base) width of sixteen feet. The unit may have an eave provided it does not extend beyond either side by:

(i) More than thirty inches for units with a box width less than sixteen feet wide; or

(ii) More than sixteen inches for a unit with a box width of sixteen feet; however, the overall width shall not, under any circumstances, exceed eighteen feet.

(c) **Width exemptions:** External features, such as door-knobs, window fasteners, eave cap, clearance lights, and load securing devices, that extend no more than two inches on each side of the unit, are exempt from the overall width measurement.

(d) **Height:** The height of the unit is limited to the actual overhead clearance of the route.

**(3) What are the criteria for receiving an annual/monthly special permit versus a single trip special permit?**

(a) **Annual/monthly permits** are issued only to dealers or manufacturers described in chapter 46.70 RCW or licensed transporters described in chapter 46.76 RCW. Use of the annual/monthly permit is restricted to the movement of housing units with a box width not exceeding fourteen feet wide, plus an eave not to exceed twelve inches, and a height not to exceed fifteen feet measured from level ground when in transit mode.

(b) **Single trip permits** are required when the permit applicant is not a qualified dealer or transporter as described in (a) of this subsection, or when the width of the housing unit box exceeds fourteen feet wide, the overall width exceeds fifteen feet wide, and/or the height exceeds fifteen feet measured from level ground when in transit mode. **Housing units that exceed sixteen feet wide and/or sixteen feet high must also comply with the requirements of WAC 468-38-405 Superloads**, prior to the issuance of a special permit.

**(4) When is it necessary to include a pilot/escort vehicle(s) in the movement of a manufactured house?** The requirements for a pilot/escort vehicle escorting a manufactured home are the same as those found in WAC 468-38-100, except that the use of a height measuring device (pole) on the front pilot/escort vehicle is not required until the overall height of the housing unit exceeds fifteen feet. The vehicle or load width referenced in WAC 468-38-100 is to be interpreted as overall width when measuring a manufactured home.

**(5) What are the insurance requirements, and what special reporting responsibilities does the transporter have in case of an accident?**

(a) Insurance requirements for the movement of a manufactured home are outlined in RCW 46.44.180.

(b) When an incident occurs while transporting a manufactured house under special permit, the transporter must immediately notify the nearest state patrol office if the damage to the manufactured home is greater than two hundred fifty dollars or if the damage to other vehicles or structures exceeds one hundred dollars. The transport of the home must not resume without permission from the state patrol.

**(6) What requirements must a manufactured home meet for axles, brakes, tires and other suspension components before it can be transported?**

(a) **Axles** on each housing unit in transport must be in sufficient number to support enough tires to comply with (c)(i) and (ii) of this subsection. Any housing unit exceeding fourteen feet wide must have a minimum of four axles.

(b) **Brakes** must be designed and installed to activate if the housing unit accidentally breaks away from the towing vehicle. Brakes must be operational on all wheels, except for housing units manufactured prior to June 15, 1976. Pre-June 15, 1976, housing units must comply with following table:

Width of Unit at Base	Number of Axles Required	Wheels w/ Brakes
> 8' 6" but < 10'	2 or more	All wheels on 2 axles (a towing unit w/minimum 9,000 GVWR all wheels on 1 axle)
10' to 14' (under 60' in length)	2 or more (3 or more if > 60' long)	All wheels on 2 axles (tires w/minimum 8:00 x 14.5, 10 ply)

(c) **Tire loadings** are dependent on when the housing unit was manufactured and must comply as follows:

(i) **Tire loadings** on housing units manufactured **after January 1, 2002**, (labeled pursuant to *Code of Federal Regulation*, 24 CFR 3282.362 (c)(2)(i)) may not exceed the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must comply with the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Stan-*

*dard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units with no verifiable date of manufacture must also not exceed the manufacturer's tire load rating.

(ii) **Tire loadings** on housing units manufactured **before January 1, 2002**, (labeled pursuant to 24 CFR 3282.362 (c)(2)(i)) must not exceed more than eighteen percent above the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must not exceed eighteen percent above the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units transported on tires overloaded by nine percent or more must not be moved at speeds exceeding fifty miles per hour (eighty kilometers per hour).

(d) Tow **spare tires**, inflated and ready for use, must be carried during transport.

(e) The manufacturer's rating must not be exceeded for any **wheel, axle, drawbar, hitch, or other suspension device**.

(7) **Does a tow vehicle (toter) have any special requirements?** Yes. The tow vehicle must:

(a) Be equipped with dual wheels on the drive axle.

(b) Have a combined minimum gross axle weight rating, assigned by the manufacturer, of thirty-two thousand pounds, if the housing unit being transported exceeds fourteen feet wide.

(c) Have sufficient engine horsepower to maintain towing speeds of forty-five miles per hour on the interstate and thirty-five miles per hour on other highways.

(8) **What unique travel requirements must be complied with?** Requirements for signs, lights, unit covering, routes, speed, moving multiple units at the same time and lane of travel are as follows:

(a) **Signs** for the towing unit and housing unit must comply with WAC 468-38-155(7). The sign for the housing unit must be mounted on the rear of the unit, on a horizontal plane, between five and seven feet above the road surface.

(b) In addition to any other **lighting** requirements in law or rule, two six-inch flashing amber lights, with a minimum of thirty-five candle power, a flashing cycle of sixty to one hundred twenty times per minute during transit, must be mounted on the rear of the housing unit, on a horizontal plane, at least ten feet above the road surface. An additional two lights, of the same specifications, must be mounted above the roofline of the towing vehicle, either on the towing vehicle roof or the front of the housing unit. The two lights at each location, front and rear, must be located as close to the outside extremities of the housing unit as practical.

(c) **Coverings** of open sides may be with a rigid material such as plywood or hardboard, or a sufficiently strong ply plastic. When plastic is used, a grillwork of lumber or similar material must be applied to prevent tears and/or billowing of the material.

(d) **Routes** of travel with restrictions must be strictly adhered to. Housing units in transport mode that exceed sixteen feet high or sixteen feet wide must be approved for travel on a case-by-case basis, as per WAC 468-38-405, Superloads. **Dealers selling extra-legal manufactured homes must advise the prospective purchaser in writing that not**

**all state highways are approved for the transport of manufactured homes in excess of twelve feet wide.**

(e) **Speed** of the in-transit housing unit is governed by WAC 468-38-175(5).

(f) **Multiple housing units moving together** must comply with WAC 468-38-175(6), Moves in convoy.

(g) The **right-hand lane must be used for travel**, except when passing or avoiding an obstruction. On two-lane highways, housing units must not pass other vehicles except when required to pass a slow moving vehicle that is hindering safe traffic flow.

(9) **Is a decal from the county treasurer required before a manufactured home can be transported?** Yes, except as provided for in RCW 46.44.170 (2)(a) and (b), a decal issued by the county treasurer must be displayed on the rear of the manufactured home during transport on public highways of this state. If the manufactured home is being transported as multiple units (double-wide or more), an individual decal must be displayed on each unit being transported.

(10) **How is the county treasurer decal issued?** The decal is issued at the same time the county treasurer issues the tax certificate that shows all taxes have been paid to date.

(11) **RCW 46.44.170 requires the department to design the decal for uniform implementation. What are the design specifications?** The decal must:

(a) Be at least eight and one-half inches square.

(b) Be printed on Appleton Radiant Florescent Bristol (weight .010) or paper of comparable quality.

(c) Be fluorescent orange in color.

(d) Disclose the make, model and serial number of the manufactured home, the date issued, the name of the transporter, the transporter's WUTC permit number ID required, the department of transportation special motor vehicle permit number, and the name of the county issuing the decal.

(e) Clearly display the expiration date of the decal, which must not be more than fifteen days after the date issued.

(12) **Can decals be transferred to other housing units?** Under no circumstance can the decal be transferred.

[Statutory Authority: RCW 46.44.090. 05-04-053, § 468-38-120, filed 1/28/05, effective 2/28/05. Statutory Authority: RCW 46.44.090 and 46.44.170. 02-17-004, § 468-38-120, filed 8/8/02, effective 9/8/02. Statutory Authority: RCW 46.44.090. 98-16-087 (Order 180), § 468-38-120, filed 8/5/98, effective 9/5/98; 96-18-053, § 468-38-120, filed 8/30/96, effective 9/30/96; 95-24-073, § 468-38-120, filed 12/4/95, effective 1/4/96; 87-20-040 (Order 62, Resolution No. 307), § 468-38-120, filed 10/1/87; 86-21-115 (Order 58, Resolution No. 286), § 468-38-120, filed 10/21/86. Statutory Authority: RCW 46.44.170. 85-22-003 (Order 51, Resolution No. 254), § 468-38-120, filed 10/24/85. Statutory Authority: RCW 46.44.090. 83-16-018 (Order 39, Resolution No. 195), § 468-38-120, filed 7/25/83; 82-18-010 (Order 31, Resolution No. 156), § 468-38-120, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-120, filed 12/20/78. Formerly WAC 252-24-150.]

**WAC 468-38-155 Safety equipment for special permit moves. In addition to any codified vehicle safety requirements, what other safety equipment may be required on a special permit move?** The following items may be required on a vehicle or vehicle combination making a move under special permit:

**(1) Brakes.**

(a) Braking equipment must comply with the performance and maintenance requirements of RCW 46.37.360, unless specifically stated on the special permit.

(b) A special permit will not be issued to a vehicle "in tow" of another vehicle without brakes unless a three-axle truck or truck-tractor with a minimum unladen weight of fifteen thousand pounds is employed as the power unit. The power unit must also have sufficient power and brakes to control the towed unit at all times.

**(2) Drawbar—Towline.**

(a) The drawbar or other connection between vehicles in combination must be of sufficient strength to hold the weight of the towed vehicle on any grade where operated.

(b) No trailing unit shall whip, weave, or oscillate or fail to follow substantially in the course of the towing vehicle.

**(3) Flags.**

(a) Flags must be displayed on all four corners of all overwidth loads, and at the extreme ends of all protrusions, projections, or overhangs.

(b) Flags must be allowed to wave freely.

(c) All flags used to identify the extremities of a load must be clean, bright red, and at least twelve inches square.

(d) When the distance between the towed vehicle and the towing vehicle exceeds fifteen feet, a white flag or cloth not less than twelve inches square must be fastened at the approximate middle of the span.

(4) **Lights.** Vehicles, whether factory direct or custom built, used in the transport of extra-legal loads must be equipped with brake lights and turn signals as required by RCW 46.37.200.

**(5) Rear-view mirrors.**

(a) Rear-view mirrors must be mounted in compliance with RCW 46.37.400.

(b) Pilot/escort vehicles may be used in lieu of the two hundred-foot rear sight/distance requirement in RCW 46.37.400.

**(6) Safety chains and devices.**

(a) A load being moved by special permit must be securely fastened and protected by safety chains or other load securing devices pursuant to *Code of Federal Regulation*, 49 CFR Part 393.100.

(b) Dragging of the load on the highway shall not be permitted.

(c) A vehicle with a boom or other aerial device attached must have the boom or device secured in such a manner that it cannot elevate (ratchet up) or sway during transport.

**(7) Signs.**

(a) An "OVERSIZE LOAD" sign must be mounted in the front of the towing vehicle at a height of five feet from ground level. If the towing vehicle cannot accommodate the five-foot height, the sign should be placed as high as practicable on the vehicle or load.

(b) An "OVERSIZE LOAD" sign must be mounted on the rear of the vehicle, or towed vehicle if in combination, at a height of five to seven feet from ground level. If the towed vehicle cannot accommodate the five- to seven-foot height for the sign, the sign should be placed as high as practicable on the vehicle or load.

(c) Signs are to be displayed only during transit and must be removed or retracted at all other times.

(d) An "OVERSIZE LOAD" sign must be at least seven feet wide and eighteen inches high with black lettering at least ten inches high in 1.41-inch brush stroke on yellow background.

[Statutory Authority: RCW 46.44.090. 05-04-053, § 468-38-155, filed 1/28/05, effective 2/28/05.]

**WAC 468-38-175 Highway travel restrictions—Days, times and highway use. What restrictions are imposed on vehicles operating under special permit relative to days, times and use of the highway?** Day, time and highway use are divided into the following categories:

(1) **Days when travel is restricted:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from the state highways on the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, and commencing at noon of the day preceding said holidays.

(2) **Commuter traffic restrictions:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from specified sections of state highways having excessive volumes of traffic during morning and afternoon commuting hours. The department shall identify and publish on the internet, and as an addendum to the special permit, specific areas, hours and vehicle widths relating to the restrictions.

(3) **Nighttime travel:** Vehicles or combinations operating under a special permit for overweight/overdimensional may be permitted to move at night on state highways subject to department preferred hours and routes of travel. "Night movement approved" must be stated on the permit, except as provided for in WAC 468-38-075. Overdimensional moves authorized to move at night must have lighting equipment that complies with the *Code of Federal Regulation*, 49 CFR, Part 393.11. No movements shall be made when visibility is reduced to five hundred feet or when hazardous roadway conditions exist (including, but not limited to: Snow, ice, mudslide, wind or water flooding over roadway). It is the responsibility of the vehicle operator to discontinue the move and exit the highway to a safe location when any of the above conditions exist.

(4) **Reversible lane use:** Trucks carrying flammable liquid cargoes, as described in chapter 470-12 WAC, are restricted from using the reversible lanes on SR 5, Seattle freeway, between James Street and 110th Street N.E. The term flammable liquid as applied to this rule shall be as defined in RCW 46.04.187. This rule applies to all vehicles, whether operating under special permit or not.

(5) **Speed limits:** Speed of travel must comply with the following:

(a) Unless otherwise stated, maximum speed for a vehicle(s) under special permit shall be the same speed limit posted for trucks.

(b) When travel on the roadway shoulder is required on a two-lane highway to allow overtaking traffic to pass, the speed must not exceed twenty-five miles per hour.

(c) If a speed limit is stated on the special permit, it becomes one of the conditions under which the permit was issued. This stated speed must not be exceeded; however, if a lower speed is posted, it shall take precedence. Violation of

the speed limit stated on the permit shall render the permit null and void.

(6) **Moves in convoy:** Extra-legal vehicles or loads requiring pilot/escort accompaniment must not travel in convoy, except as provided for in WAC 468-38-290 (8)(e).

[Statutory Authority: RCW 46.44.090. 05-04-053, § 468-38-175, filed 1/28/05, effective 2/28/05.]

**WAC 468-38-270 Specialized mobile equipment. (1) Why are certain vehicles designated as specialized mobile equipment?** Certain vehicles are designed and built for very unique functions other than transporting persons. The federal highway administration has classified some of these vehicles as specialized mobile equipment and set minimum and/or maximum parameters for the vehicle to operate legally. The department has adopted these specialized classifications and accepted or further defined the legal parameters for operation on state highways. In addition to federal rule, the department has also recognized certain specially designed vehicles that, by necessity, exceed one or more of the vehicle size and weight parameters. The department has also classified these over-legal vehicles as specialized mobile equipment in order to address their needs, via special permit, and provide a consistent administrative and enforcement treatment. This rule is not intended to encourage the development of vehicles that exceed the legal requirements of chapter 46.44 RCW. All vehicles exceeding legal requirements are subject to restricted access to the state highway network.

(2) **What specialized equipment, including size parameters, can operate legally without a special permit?** Listed in alphabetical order:

**Automobile transporter:** To be considered an automobile transporter, the power unit and the trailing unit must be modified to carry assembled automobiles. If the combination consists of a truck and stinger-steered trailing unit, the overall dimension for length can be up to seventy-five feet, plus a front overhang of three feet and rear overhang of four feet. A combination of tractor semi-trailer (traditional high mount) may have an overall dimension for length of sixty-five feet, plus three-foot front overhang and four-foot rear overhang.

**Boat transporter:** See automobile transporter.

**Munitions carriers with dromedary equipment:** A truck tractor equipped with a dromedary unit operating in combination with a semi-trailer transporting Class 1 explosives and/or any munitions related security material, as specified by the U.S. Department of Defense in compliance with 49 CFR 177.835, may have an overall dimension for length up to seventy-five feet.

(3) **What specialized equipment, including size and weight parameters, can operate with special permit?** Listed in alphabetical order:

**Concrete pumper trucks:** As a single unit fixed load vehicle, may exceed the legal weight limits up to the maximums established in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Included with the fixed load are pumper hose extensions and a necessary volume of water to flush the system at the job site when the pumping process is complete.

**Construction equipment:** Equipment used primarily for off-road heavy construction activity may be permitted for use on designated highway segments up to the maximums established in RCW 46.44.091 when properly equipped for highway operation per chapter 46.37 RCW. Equipment delivered to a construction site may operate without permit on highway segments designated as part of the construction zone.

**Cranes:** As a single unit fixed load vehicle, may exceed the legal weight limits up to the maximums established in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Cranes may be permitted with standard working components that are included within the rated capacity of the crane. A boom trailer or boom dolly will be permitted only when the boom is attached to the crane upper works, for the purpose of transferring load to meet weight requirements. A crane may be permitted with counterweights, outrigger assemblies, load block, hook and cable tension ball assembly also loaded on the boom trailer or boom dolly, as long as those components are included in the rated capacity of the crane and do not cause the vehicle to exceed permitted weight limits.

**Well drilling trucks:** As a single unit fixed load vehicle, may exceed the legal weight limits up to the maximums established in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. In addition to the fixed load, the vehicle may carry drill extensions.

(4) **Can specialized mobile equipment tow a licensed vehicle used for commute purposes?** A specialized self-propelled single unit vehicle registered as a fixed load, operating under a fixed load permit, and/or cranes operating under an oversize/overweight permit (exclusive of boom dollies or trailers), may be permitted to tow a vehicle with a gross vehicle weight rating not to exceed eight thousand pounds. The overall length of the combination must not exceed seventy-five feet. The towed vehicle must be used for the sole purpose of commuting to and from the job site where the specialized mobile equipment is in service.

(5) **Does a specialized mobile vehicle operating under an overweight or fixed load permit receive any exemption from postings or restrictions placed on highway infrastructure?** No. Specialized mobile equipment must not cross load-restricted infrastructure when the equipment, either as a result of gross weight, axle weight or tire loadings, exceeds the stated capacity of the posting or restriction.

[Statutory Authority: RCW 46.44.090 and 2005 c 189. 05-12-001, § 468-38-270, filed 5/18/05, effective 6/18/05. Statutory Authority: RCW 46.44.090. 82-18-010 (Order 31, Resolution No. 156), § 468-38-270, filed 8/20/82. Formerly WAC 468-38-380. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-270, filed 12/20/78. Formerly WAC 252-24-336.]

**WAC 468-38-280 Retractable axles. (1) What criteria must a retractable axle meet in order to carry the weight provided in RCW 46.44.041?** The retractable axle must meet three criteria:

(a) The retractable axle must have a manufacturer's rating of at least eight thousand pounds. The weight carried on the axle must not exceed the design load capacity as indicated by an attached data plate or written certification from the vendor/manufacturer; and

(b) The weight carried per tire must not exceed the lesser of manufacturer's rating or five hundred pounds (six hundred when operating under a special permit for overweight) per inch width of tire as described in RCW 46.44.042; and

(c) The axle must be self-steering.

**(2) Are there restrictions on the location of the operating controls for the retractable axle?** Yes. The simple "up/down" control may be in the driver's compartment; however, any variable control used to adjust axle loadings, by regulating air pressure or other means, must not be within reach of the driver's compartment.

**(3) Are there any exceptions to the self-steering requirement?** Yes. The self-steering requirement does not apply when:

(a) The retractable axle, equipped with four tires, is used to create a tandem axle configuration on a truck or truck-tractor. The distance between the drive axle and the retractable axle must not exceed sixty inches.

(b) A retractable axle is used adjacent to a fixed axle on a trailing unit and distance between the two axles does not exceed sixty inches.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-280, filed 1/28/05, effective 2/28/05; 95-24-075, § 468-38-280, filed 12/4/95, effective 1/4/96; 93-19-056 (Order 138), § 468-38-280, filed 9/10/93, effective 10/11/93; 85-22-002 (Order 50, Resolution No. 253), § 468-38-280, filed 10/24/85; 82-18-010 (Order 31, Resolution No. 156), § 468-38-280, filed 8/20/82. Formerly WAC 468-38-390. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-280, filed 12/20/78. Formerly WAC 252-24-339.]

**WAC 468-38-290 Farm implements.** (1) **For purposes of issuing special permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must weigh less than forty-five thousand pounds, be less than twenty feet in width and not exceed fourteen feet high. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks having protuberances that will not damage public highways. Implements exceeding any of these criteria must meet all appropriate requirements for special permits as referenced in other sections throughout this chapter.

**(2) What dimensional criteria must be met before a special permit is required to move extra-legal farm implements?** Self-propelled farm implements, including a farm tractor pulling no more than two implements, that exceeds sixteen feet in width, but less than twenty feet wide, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

**(3) Will the ability to acquire a special permit to move oversize farm implements be affected if the implement(s)**

**is carried on another vehicle?** The ability to use a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection (4) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds fourteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement may weigh up to forty-five thousand pounds; however, the combined gross weight of implement and hauling unit may extend to the limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of the circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the appropriate requirements for special permits as referenced in chapter 46.44 RCW and in other sections throughout this chapter.

**(4) How does the application process for a special permit for farm implements differ from the process outlined in WAC 468-38-050?** Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for a three-month period up to one year. Once approved, the special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent allowing the applicant to acquire a permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

**(5) Who is authorized to acquire this specific special permit?** The acquisition and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

**(6) Does the permit restrict the movement to a specific area?** The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification the area can be expanded.

**(7) Are notifications of movement required?** Movements of vehicles in excess of sixteen feet wide must be communicated to all department maintenance areas affected at least eight hours in advance. The communication is for the purpose of ensuring there will not be any planned activity that would restrict the move. Locations of maintenance area offices and phone listings are provided with each letter authorizing the purchase of the special permit.

**(8) What safety precautions must be taken when moving extra-legal farm implements?** The movement of extra-legal farm implements must comply with the following safety requirements:

(a) **Oversize load signs:** If the farm implement exceeds ten feet wide, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7).

If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide must comply with any published curfew or commuter hour restrictions.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet wide, the vehicle configuration must display clean, bright red flags. The flags must measure at least twelve inches square and be able to wave freely. The flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of transporting vehicle or vehicle combination by more than four feet, one flag is required at the extreme rear. If the width of the rear overhang/protrusion exceeds two feet, there must be two flags positioned at the rear to indicate the maximum width of the overhang/protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.160. In addition to the lighting requirements, RCW 46.37.160 also requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the following criteria are met:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to pass safely;

(ii) If five or more vehicles are lined up behind any one of the implements, the operator must pull off the road at the nearest point wide enough to allow the vehicles to pass safely; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) **Are there any unique requirements or exemptions regarding the use of pilot/escort vehicles with farm implements?** Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the following specific exemptions related only to special permits for moving farm implements:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and on the following interstate segments:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; and

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to

twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) A flag person(s) may be used in lieu of a pilot/escort(s) for moves under five hundred yards. This allowance must be stated on any permit that may be required for the move.

(d) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be removed immediately after the move has been completed.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-290, filed 1/28/05, effective 2/28/05; 00-17-060, § 468-38-290, filed 8/9/00, effective 9/9/00; 00-11-038 (Order 199), § 468-38-290, filed 5/10/00, effective 6/10/00; 99-18-019 (Order 192), § 468-38-290, filed 8/23/99, effective 9/23/99; 85-11-062 (Order 46, Resolution No. 243), § 468-38-290, filed 5/20/85; 83-16-018 (Order 39, Resolution No. 195), § 468-38-290, filed 7/25/83; 82-18-010 (Order 31, Resolution No. 156), § 468-38-290, filed 8/20/82. Formerly WAC 468-38-460. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-290, filed 12/20/78. Formerly WAC 252-24-342.]

**WAC 468-38-360 Building/house moves. (1) Are there special requirements for the movement of a house/building that is not defined as a manufactured house or modular building?** The department's regional administrator, or designee, must approve an application for movement of buildings or houses exceeding sixteen feet wide on two lane roads, or twenty feet on multilane roads with a median barrier.

(2) **Is there a limit to the distance a building/house can move?** A building/house that exceeds the dimensions in subsection (1) of this section is limited to a distance of five miles. Additional consecutive five-mile permits will not be issued to exceed the five-mile limitation. The regional administrator, or designee, may grant an exemption if the special permit applicant can justify the move as in the public interest or as the avoidance of extreme hardship. Justification will generally require independent documented evidence, to include, but not be limited to:

(a) Cost, equity and sales data;

(b) Historic significance;

(c) Public benefit; or

(d) National defense.

(3) **How much lead-time is necessary to have an application for special permit reviewed?** The application (DOT Form 720-028) must be completed and submitted to the regional office at least ten working days before the proposed move.

(4) **If the weight of the building meets the criteria for a superload (WAC 468-38-405), does the superload lead-time requirement apply?** Yes. Generally loads of two hundred thousand pounds or more require review and analysis by the department's bridge condition office and the pavements office, both located in the Olympia area. Per RCW 46.44.091, a written application must be submitted at least thirty calendar days in advance of the proposed move to accommodate the review and analysis process.

**(5) What information must be included on the application?** The application must show at a minimum:

- (a) Name, address and contact phone number of the owner;
  - (b) Name, address and contact phone number of the mover, if different than the owner;
  - (c) Proposed route - complete with traffic control plan;
  - (d) Physical description of the structure, including estimated weight and dimensions;
  - (e) Arrangements for moving overhead obstacles;
  - (f) Number and configuration of hauling vehicles (tow unit, dollies, etc.); and
  - (g) Any additional requirements outlined in this section.
- (6) Will inspections be performed prior to the move?**

When deemed necessary, a department employee will make a visual inspection of the structure, hauling vehicles, and proposed route. The owner will provide equipment necessary for the inspection, such as a ladder, on-site. The inspection must, at a minimum:

- (a) Verify dimensions of the structure, including all appurtenances, i.e., porches, eaves, etc., that could not be removed without affecting the structural integrity;
- (b) Check for appropriate strapping for brick or other masonry;
- (c) Verify all overhead obstacles, including traffic signals, wires, and/or mast arms have been identified and approved for movement by the region traffic engineer;
- (d) Insure all dollies are **not** equipped with hard rubber or solid cushion rubber tires;
- (e) Verify tow vehicles (a back-up vehicle may be required) have a valid certificate of inspection from the state patrol; and
- (f) Determine if state forces will be required to participate in the move (state force work will be estimated and paid in advance with a billing/refund adjustment made after the move is completed).

**(7) What is the maximum speed of travel for a building/house move governed by this section?** The maximum speed must not exceed twenty-five miles per hour.

**(8) Is there a limit to the amount of time traffic can be delayed?** Time allotted for traffic delays will be at department discretion, but must not exceed five minutes.

**(9) Is there consideration for emergency vehicles?** Reasonable accessibility for emergency vehicles navigating around the move must be maintained.

**(10) Must the applicant notify the state patrol of the move?** The applicant must notify the state patrol forty-eight hours in advance of the scheduled move. The notification must provide the state patrol with the time of the move and the route. The region may also require the applicant to contract, at applicant expense, with the state patrol to assist with traffic control.

**(11) What precautions must be taken regarding railroad crossings?** If railroad tracks are to be crossed, the applicant must notify the appropriate railroad company of the move. Contact information must be obtained in order to communicate with the railroad immediately prior to accessing the crossing to ensure safe passage. This information must be part of the traffic control plan submitted with the application.

Additionally, each crossing must have a pretrip analysis to assure vehicle(s) will clear the grade crossing.

**(12) Is there an insurance requirement for the mover of the structure?** The permit applicant must provide proof of insurance in the following amounts:

- (a) Commercial operators must have at least seven hundred fifty thousand dollars of liability insurance; and
- (b) Noncommercial operators must have at least three hundred thousand dollars of liability insurance.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-360, filed 1/28/05, effective 2/28/05; 93-04-071 (Order 136), § 468-38-360, filed 1/29/93, effective 3/1/93; 82-18-010 (Order 31, Resolution No. 156), § 468-38-360, filed 8/20/82. Formerly WAC 468-38-440. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-360, filed 12/20/78. Formerly WAC 252-24-363.]

**WAC 468-38-405 Superloads. (1) What are the criteria that defines a superload in Washington state?** A superload is any nondivisible load that exceeds two hundred thousand pounds and/or exceeds outside dimensions of sixteen feet in height, or sixteen feet in width or have a trailing unit(s) plus load in excess of one hundred twenty-five feet in length.

**(2) Will a special permit applicant need to provide additional lead-time for processing the superload application?** Pursuant to RCW 46.44.091(5), applicants attempting to move loads in excess of two hundred thousand pounds must submit their application at least thirty calendar days in advance of the proposed move. Applicants that are attempting to move a load that does not meet the weight criteria for a superload but does meet the dimensional criteria must submit their application at least seven calendar days before the proposed move. All applications must be submitted in written form. Electronic submissions are considered as written format. These lead-times are necessary to allow the department sufficient time to perform an analysis of pavements and structures that would be affected by the proposed move.

**(3) Are there requirements for additional information to accompany the standard application form?** All, or selections from, the following information may be required as part of the standard application:

(a) Documentation that the move is in the public interest and that an alternative method of transport is not feasible.

(b) A schematic or photograph of the item to be moved, including an explanation of why it cannot be moved in smaller pieces.

(c) A schematic of the loaded vehicle(s), including axle loadings, axle spacings (measured from the center of each axle), tire sizes, number of tires per axle, and the proposed height, length and width of the configuration.

(d) A traffic control plan depicting the route and specific procedures to be followed to provide safe movement along the route, including:

(i) Identified locations where anticipated traffic delays will occur and where the delays can be allowed to clear;

(ii) Description of any lane restrictions;

(iii) How pilot/escort vehicles and flag persons will be used;

(iv) Arrangements for the movement of overhead obstacles;

(v) Identification of railroad crossings and contact information, including a pretrip analysis of each crossing to assure vehicle(s) will clear the grade;



(vi) Provisions for emergency vehicles to navigate around the configuration; and

(vii) Contact information for on-call services in case of mechanical failure (i.e., need to replace tow vehicle during movement).

(4) **Will the applicant bear any of the cost of analysis performed by the department?** If, due to the size of the configuration, the analysis will require a significant expenditure of department resources, the applicant may be required to share in those costs. Estimates would be provided to the applicant prior to beginning the analysis, allowing the applicant to make the decision on whether or not to proceed.

(5) **If either pavements or structures are found to be inadequate, what options does the applicant have?** When either the pavement or a structure on the proposed route is found to be inadequate, the permit application will be denied. The applicant must find an alternative acceptable route, or reconfigure the transported item on a vehicle(s) that can conform to the limitations of the proposed route.

(6) **Will a superload require the use of pilot/escort vehicles beyond the requirements established in WAC 468-38-100(1)?** Additional pilot/escort vehicles, and/or law enforcement vehicles, may be required as a result of the dimension of the load relative to the route and the time of day the move will be made. As indicated in WAC 468-38-100 (1)(j), assignments of this nature must be authorized through the department's administrator for commercial vehicle services. The motor carrier when planning a superload move must take into consideration the potential for additional vehicles.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-405, filed 1/28/05, effective 2/28/05; 95-24-076, § 468-38-405, filed 12/4/95, effective 1/4/96.]

**WAC 468-38-420 Bridge restrictions. (1) What is the difference between posted bridges and restricted bridges, and how do they apply to legal and extra-legal vehicles?**

(a) **Posted bridges:** The department performs periodic inspections and evaluates the capacity to carry loads on all bridges on state highways. Bridges that are identified as unable to safely carry vehicles with legal weight, per RCW 46.44.041, must be posted (signed) with the maximum weight limits. Applications for extra-legal weight moves that exceed a posted bridge limit on the requested route will be returned to the applicant by the department. The applicant may change the vehicle configuration to comply with the posted limit or change the proposed route. Vehicles that exceed the posted load limit must not cross the bridge.

(b) **Restricted bridges:** Most bridges on state highways can safely carry legal vehicle weights, per RCW 46.44.041; however, some bridges may not be capable of carrying extra-legal weights, provided for in RCW 46.44.091. The department, based on periodic inspections and evaluations, may determine that a vehicle cannot safely cross a bridge at extra-legal weights. As a result, the department must restrict axle weights on the identified bridges. These restrictions are not posted on the bridge, but are disclosed to the special permit applicant during the permitting process. Applications that exceed a bridge restriction on the requested route are returned to the applicant by the department. The applicant may change the vehicle configuration to comply with the restriction or

change the proposed route. Vehicles with extra-legal weight authorized by special permit must comply with any bridge restriction noted on the permit. A violation of any restriction will cause the special permit to become null and void.

(2) **Is there a published list of posted and restricted bridges?** Yes. The department publishes and maintains both lists on the department's web site. A hard copy is also available upon request, but has limited value due to the frequency of changes.

[Statutory Authority: RCW 46.44.090, 05-04-053, § 468-38-420, filed 1/28/05, effective 2/28/05; 82-18-010 (Order 31, Resolution No. 156), § 468-38-420, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-420, filed 12/20/78. Formerly WAC 252-24-381.]

## Chapter 468-60 WAC

### TRIP REDUCTION PERFORMANCE PROGRAM

#### WAC

468-60-010

Trip reduction performance program.

**WAC 468-60-010 Trip reduction performance program.** The Washington state department of transportation (WSDOT), together with the commute trip reduction (CTR) task force, will administer the trip reduction performance program (TRPP). This program is designed to create cost-effective trip reduction projects that reduce the number of commute vehicle trips and commute vehicle miles traveled (VMT). The 2003 legislature created this program to provide financial incentives or compensation to organizations that implement and administer cost-effective projects that increase the capacity of the transportation system by reducing the number of vehicle trips and miles traveled for commute purposes. The amounts awarded will be based on the estimated cost to reduce an annualized trip, and the projected number of annual commute vehicle trips and commute VMT reduced during the project period (the project goal). Up to half of the award amount is available through reimbursement for start-up costs. The remaining award amount, as well as any bonus funds, will be determined based on the actual performance of their project in meeting or exceeding their goal. If necessary, WSDOT will revise these rules periodically to create a more efficient, cost-effective, trip reduction program.

(1) **What are trip reduction performance projects?** Funds are awarded on a competitive basis to organizations that create cost-effective projects designed to reduce commute vehicle trips and commute VMT (based on the morning commute). The organization will receive funds based on the value associated with each trip and overall project performance. The TRPP is available to private employers, public agencies, nonprofit organizations, developers, and property managers who find new (to the area), sustainable ways to reduce the number of vehicle trips and vehicle miles traveled per person for commuting, or who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and alternative work schedules.

(2) **Definitions.** For purposes of this section, the following definitions apply.

(a) *Financial incentives* is defined as a policy, procedure, capital investment or payment intended to provide employees a financial gain if they commute in ways other than by driving alone. For example, the eligible incentives may include, but are not limited to: Providing a free transit pass, reducing the parking charge for rideshare vehicles, initiating parking charges for employee vehicles, reducing the cost of a transportation service such as a transit pass, paying the membership fee for a car sharing program, providing employees alternative work week schedules, providing a direct cash payment, reducing the insurance rate for employees who reduce the use of their vehicle for commuting, or reducing the distance an employee travels to work by reassigning their work location to a worksite closer to their home.

(b) *Car sharing* means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(c) *Telework* means a program where work functions that are normally performed at a traditional workplace are instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(d) *Commute vehicle trips* is defined as the number of vehicle trips made to bring employees to work at a worksite or specified collection of worksites each morning.

(e) *Reduced commute vehicle trips* is defined as the change in the number of vehicle trips made to bring a consistent number of employees to a worksite or collection of worksites. Reduced vehicle trips can be calculated using a baseline survey that measures the number of vehicles arriving at the specified worksite(s) and the mode split, and a subsequent survey that includes the same audience, the mode split, and an adjustment made for the change in the number of employee responses between the two surveys. The difference between the two surveys will show an increase or reduction in commute vehicle trips. Subsection (15) of this section describes in detail the process used by WSDOT to calculate reduced commute vehicle trips.

(f) *Commute vehicle miles traveled per person (VMT)* is the average distance employees travel to work (one way) in a motor vehicle, divided by the vehicle occupancy. For passenger cars, trucks, vans, and motorcycles, WSDOT will calculate the vehicle occupancy from survey data using CTR task force guidelines, or from equivalent data as agreed by WSDOT and the applicant. For buses, WSDOT will assume an average occupancy of twenty-five persons. Bicycling, walking, train ridership, and the avoidance of commute vehicle trips via telework and use of compressed workweeks, will not be considered as using motor vehicles.

(g) *Reduced VMT* is defined as the measured change in the number of vehicle miles traveled per employee. Reduced VMT can be calculated from two separate surveys that measure the commute distance per employee and the way they commute to work.

(h) *Performance* is defined as the reduction in the number of commute vehicle trips to the work location and the reduction in the commute vehicle miles traveled by employees at the specified work location(s).

(i) *Eligible trips* are defined in this section as the commute trips taken by employees at the targeted worksite(s)

established in the applications and measured using the proposed measurement methodology.

(j) *Agent* is an organization or individual who represents the private employer, public agency, nonprofit organization, developer, or property manager and is charged with managing the TRPP or providing the employee the financial incentive.

(k) A *cost effective application* is one that defines a project that will reduce commute vehicle trips and commute vehicle miles traveled at a cost less than the defined roadway capacity cost. This cost will vary by year and will be clearly identified on the TRPP application form.

(l) *Mode split* is the percentage of employees traveling to work using various means of transportation (known as modes). For example, if the drive alone mode split for a worksite is seventy-three percent, then seventy-three percent of the employees arriving at that site drove alone.

(m) *Commute mode* is the means of transportation an employee took to work. For example, their commute mode may be by driving alone, carpooling, alternative work schedule, teleworking, etc.

(n) *An annualized commute vehicle trip* is the average number of vehicle trips made each working day by a commuting population. If, for example, one hundred employees drive alone to a job that lasts six months, the result would be fifty "annualized" commute vehicle trips. WSDOT assumes two hundred fifty workdays per year for calculating an annualized trip.

(3) **Who can apply?** The statewide funds are available on a competitive basis for private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who create new, sustainable trip reduction projects, and who provide financial incentives to their own or other employees for ridesharing, public transportation, non-motorized transportation, telework, and compressed work weeks.

(4) **What kinds of projects will be funded?** To receive funds, the project must meet the program requirements and rank highly in the competitive review. The applicant determines the actual scope and design of the project. New and existing projects are eligible for selection. The primary focus of the review committee will be to select sustainable, cost-effective trip reduction projects, and if they are new or innovative, they will be given additional consideration.

(5) **How much money is available for the program?** The amount of funds made available for this program is set in the state transportation budget. For the 2005-2007 biennium, one million five hundred thousand dollars is budgeted for the projects.

(6) **How will the TRPP funds be distributed?** A minimum amount of the TRPP funds is to be available for each of three funding zones: Ten percent of available funds for Central Puget Sound (CPS) (King, Pierce, Snohomish counties), ten percent of available funds for non-Central Puget Sound applications, and ten percent of available funds for statewide applications (applications with worksites in the CPS and outside the CPS). The remaining funds will be awarded based on the project's ranking and available funds. WSDOT is bound to this distribution only if there are applications that fit the program structure and are viable, cost-effective trip reduction projects.

(7) **How much money will be awarded to individual projects?** Funds will be allocated based on the estimated commute vehicle trips and miles traveled reduced for the project. The applicant will provide an estimate of the anticipated performance (their goal), and the amount of funds they request. Once the selection committee ranks the projects, WSDOT will award funds based on committee ranking until seven hundred fifty thousand dollars is awarded in each fiscal year or all cost effective projects are funded. No one employer, etc., may receive more than one hundred thousand dollars per fiscal year.

(8) **How much money can be awarded to applications with multiple partners?** Each organization (agency or employer) on the application may receive up to one hundred thousand dollars with the total amount not to exceed two hundred fifty thousand dollars per application, per fiscal year.

(9) **How does the applicant apply for the TRPP funds?** This subsection describes the application procedures used in the TRPP. WSDOT will notify eligible applicants of the open period for applications. WSDOT may open more than one application period per year depending on whether all funds are awarded. Applicants apply by submitting a completed "TRPP" application form during an open application period. The "TRPP" application form is available on request from WSDOT and is also available by visiting WSDOT's web site at: <http://wsdot.wa.gov/TDM>.

(a) Applicants may submit more than one project application for consideration; however, when the sum of all the project costs are combined, they cannot exceed what the individual applicant is eligible to receive.

(b) Applicants may submit an application that will cover one or two years (basic project) or apply for projects that cover three to five years (multi-year projects).

(c) For basic projects, applications must estimate the number of vehicle trips and VMT reduced for each fiscal year, and must specify their target audience. Only one baseline measurement will be required for a basic project. A final measurement will be required to determine the project's performance. A two-year basic project can receive the start-up portion of their award in the first year, and the performance portion in the second year. If a basic project is granted a renewal, the applicant may be required to conduct another baseline measurement. Renewal applications may include a proposed adjustment to the trip price and/or goal. Adjustments to the trip price or goal are subject to approval by WSDOT. All basic projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips.

(d) In the case of multi-year projects (three to five years), applicants must estimate the number of vehicle trips and VMT reduced for each biennium, as well as a project total, and must specify their target audience. Only one baseline measurement will be required for multi-year projects, unless otherwise stated in the scope of work. An interim measurement must be conducted prior to the end of each biennium, and a final measurement at the end of the project. Interim and final performance funds, as well as bonus funds will be based on these measurements. Recipients will be able to receive start-up funds that are phased throughout the life of the project (see subsection (12) of this section for details on start-up fund disbursement). Performance funds will be available

at the end of each biennium (interim performance funds) and again at the end of the project. The interim and final performance measurements and requests for funds must be received by WSDOT by June 15th. Projects may apply for an adjustment to the trip price and/or their goal at the end of each biennium. Trip price and goal adjustments will be subject to review and approval by WSDOT. All multi-year projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips. Payments for multi-year projects are contingent upon the provision of legislative funding in future biennia.

(e) No TRPP funds will be awarded to an applicant requesting compensation at a rate higher than the estimated annualized cost of providing new roadway capacity (maximum per trip cost) adopted for this program. The maximum per trip cost will be provided by WSDOT as part of the application document.

(f) For purposes of distributing awarded funds, one trip is assumed to equal 13.07 VMT (the average commute distance measured as part of the CTR program) or the average one-way commute distance for the employees covered by the project. The applicant may, through documentation in the applications, provide a different trip to VMT ratio that is specific to employees in their proposal.

(g) An agent "who will provide the financial incentive to the employee" can submit a project partnership application and be the prime recipient for the project. All procedures in this section will apply to the agent for this type of partnership project.

(h) No applicant may claim full reduction in employee commute vehicle trips or commute VMT that are claimed as part of another project. If the initial screening determines that project overlap will occur, WSDOT will notify the applicants, and will provide them with the opportunity to adjust their trip prices and goals. The payout for areas where WSDOT can determine the overlap will be adjusted by dividing the amount per trip by the number of TRPP projects involved in the overlap.

(10) **How will the application be reviewed?** An award committee comprised of between six and nine members will be selected by the chair of the CTR task force and will include at least two members of the commute trip reduction task force, at least one member from Central Puget Sound and one from the rest of the state, at least one employer, at least one transit member and at least one city government representative. Projects will be selected based on the criteria as defined in subsection (11) of this section.

(11) **What are the review criteria?** The applications will be reviewed based on the following criteria:

(a) **Cost effectiveness:** Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of TRPP funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(b) **Sustainability:** If this project is funded, will its benefits continue after the funding element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all TRPP funds are used? Can the reduction in trips be sustained over a "multi-year project" timeline?

(c) **Innovation:** Is the proposed project a new idea, or something that's been done before but is new to the area? Does the project propose unique cost-effective ways to reduce trips?

(d) **Measurability:** The performance of the project must be measurable. If an applicant proposes to use their own measurement approach, a detailed measurement plan will be submitted as a part of the application and must be approved by WSDOT. The measurement approach must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool (subsection (15) of this section). Deviations from the approved measurement plan will be subject to review and approval by WSDOT. WSDOT may terminate the contract if the measurement deviation is not approved.

(e) **Project implementation:** What is the timeline for implementation of the project? When and how will the project be advertised to the target audience? All projects must conduct a baseline survey at the beginning of the project prior to implementation of the project. The applicant must indicate the implementation timeline, proposed measurement methods and measurement schedule in the application. If the nature of the project does not allow for a single baseline survey, the applicant must indicate the proposed measurement methodology as a part of the application. All projects must be implemented within three months (first quarter) after signing the contract in order to receive one hundred percent of the awarded funds. If the project is not implemented until the second quarter, only seventy-five percent of the awarded funds will be available; fifty percent if implementation does not occur until the third quarter; and twenty-five percent if implementation does not occur until the fourth quarter.

(f) **Applicant provides incentives:** To be eligible for TRPP funds, the applicant must provide financial incentives to their own or other employees for ridesharing, using public transportation, car sharing, or nonmotorized commuting.

(g) **Project predictability:** Are the estimates of employee participation, trip reduction, and VMT reduction likely to be achieved based on the assessment of the review committee?

(h) **Redundancy:** Does the project propose to provide services that are already available to the employees?

(i) **Thoroughness:** Has the project been thoroughly researched and carefully thought out? Are adequate details present in the application?

(12) **How will the recipient receive the money?** Once the projects have been reviewed, prioritized and selected, the applicant will enter into a contract with the Washington state department of transportation for implementation of the project. This contract will establish the amount of money the award recipient can receive for the project, the timelines and performance expectations. The funds will be provided to the recipient through three approaches: Start-up, performance and performance bonus. A draft contract will be made available by WSDOT prior to project selection.

(a) **Start-up funds:** The basic project award recipient may request up to fifty percent of the awarded amount after a baseline measurement is completed or accepted. Start-up funds can be requested in the first year of the project. Multi-year project award recipients are eligible for start-up funds through a phased payment approach. To calculate the start-up

fund disbursement for multi-year projects, multiply the total project amount by 0.5, then divide that number by the number of years in the project. Start-up funding will be provided on a dollar for dollar, cost-reimbursable basis, but will not exceed fifty percent of the total project award for the duration of the project. The remaining award amount is considered performance funds.

(b) **Performance funds:** The remaining funds will be available to the recipient following the performance measurement. For basic projects, the recipient has the option to measure their performance at the halfway point (interim measurement), but is required to measure at the end of their project. If the recipient conducts an interim measurement, they will be eligible to receive half of the performance funding following this measurement with the balance available after the final measurement survey. If the recipient elects to forego an interim measurement, all of the remaining funds will be available after the final measurement, and will be determined by the performance of their project. For multi-year projects, the recipient must measure their performance at the end of each biennium (by June 15th), and at the end of the project. All projects must reduce trips to be eligible for performance funds.

(c) **Performance bonus funds:** These funds will only be provided at the end of the contract period and the recipient will receive the funds for additional performance based on the same award rate per trip reduced and same award rate per VMT reduced as identified in their contract. The recipient will be eligible to receive additional bonus funds up to one hundred twenty percent or up to the maximum per trip cost (whichever is less) for every trip that exceeds their anticipated performance (the projected number of trips reduced). The performance bonus portion of the funding will only be available if funds are remaining in the TRPP account.

(13) **Receipt of TRPP funds:** To receive all eligible TRPP funds for the fiscal year, the recipient must provide measured data on their project's performance (baseline, interim and final surveys) to WSDOT by June 15th. The recipient must submit a TRPP fund disbursement form provided by WSDOT in order to request funds. On this form the recipient will identify the funds requested and provide documentation of performance or expenditures for reimbursement of start-up costs. For the performance portion of the TRPP award, no funds will be made available without documentation of actual employee reductions in VMT and vehicle trips. Applications for multi-year projects must demonstrate the organization's ability to accept payments for performance, as well as bonus funds, through the end of the project time frame.

(14) **Performance documentation:** The applicant must, as part of the application, describe the measurement approach for their project. WSDOT will make available a survey instrument that can be used to measure performance at employer worksites. The recipient may elect to provide performance data in an alternative format. The alternative format will be subject to approval by WSDOT. The measurement approach used by the applicant must clearly demonstrate how reduced trips and VMT are calculated and how adjustments will be made for changes in employee population.

(15) **Measurement of VMT and commute trips reduced:** Measurement of performance must provide actual

counts of vehicle trips and VMT made by the employees in the program, preceding and following the project period. The performance measurement must adjust for changes in employee populations during the project period. WSDOT will use the following methodology to calculate changes in the number of commute trips and commute VMT at a project worksite(s):

(a) **Baseline survey.** At the beginning of the project, the worksite(s) will survey their employees about their commuting behavior using the standard WSDOT commute trip reduction employee survey form. This initial survey is called the baseline survey. WSDOT will calculate a baseline mode split, based on results from the baseline survey. In calculating this mode split, and those from subsequent surveys, WSDOT will calculate assumptions to adjust for missing data, days reported by employees as not worked, inconsistency between commute mode and vehicle occupancy data, and reported use of compressed workweeks as specified in the CTR guidelines published by WSDOT and available on the internet at <http://www.wsdot.wa.gov/tdm/tripreduction/CTRguide/SEC3.cfm>. Any start-up costs are contingent upon completion or acceptance of the baseline survey.

(b) **Performance measurement survey.** For basic projects (one- to two-year), the recipient will have the option to survey the eligible project employees midway through the project (by June 15th if it is a two-year project), and is required to survey at the end of the project. For multi-year projects (three to five years), the recipient will be required to survey the eligible project employees at the beginning of the project, each biennium (by June 15th), and at the end of the project.

(c) WSDOT will calculate the mode split based on the results of the performance measurement. Using the number of employees at the site and the mode split from the baseline survey, WSDOT will calculate the average number of vehicle trips that employees took per day. Using this same number of employees, WSDOT will calculate the average number of trips the employees took per day during the performance measurement survey (interim or final) and compare it to the mode split calculated from the baseline survey.

(d) The difference between the two numbers calculated under subsection (2)(b) of this section is the change in the average number of trips per day at the site between the two surveys. These calculations take into consideration changes in employment at the site; the employer will not be entitled to increased payments due to a reduction in force or be penalized because of an increase in employment.

(e) WSDOT will calculate the average one-way distance for morning commute trips made by each mode in the performance measurement survey, and multiply this by the change in the average number of trips by that mode per day. The sum of these values for motorized commuting modes is the change in VMT.

[Statutory Authority: RCW 70.94.996. 05-19-042, § 468-60-010, filed 9/14/05, effective 10/15/05. Statutory Authority: RCW 70.94.996, 70.94-.534, 70.94.541. 04-06-087, § 468-60-010, filed 3/3/04, effective 4/3/04.]

## Chapter 468-95 WAC

### MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS

#### WAC

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468-95-370	Pavement markings for obstructions.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

468-95-110	Parking for the disabled in urban areas. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-110, filed 2/28/03, effective 3/31/03.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.
468-95-130	High occupancy vehicle signs. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, §

- 468-95-130, filed 2/28/03, effective 3/31/03.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.
- 468-95-170 White lane line markings. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-170, filed 2/28/03, effective 3/31/03.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.
- 468-95-240 Preferential lane longitudinal markings for motorized vehicles. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-240, filed 2/28/03, effective 3/31/03.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.
- 468-95-315 Motorcycle construction warning signs. [Statutory Authority: RCW 47.36.200 and 47.36.030. 04-08-010, § 468-95-315, filed 3/25/04, effective 4/25/04.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.
- 468-95-320 School advance warning sign (S-1). [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-320, filed 2/28/03, effective 3/31/03.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.
- 468-95-400 Sign borders. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-400, filed 2/28/03, effective 3/31/03.] Repealed by 05-23-003, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030.

**WAC 468-95-010 General.** The 2003 Edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation. Revisions are incorporated into the November 2003 Edition of the MUTCD, except as may be modified herein, when published by the Federal Highway Administration. The manual includes in part many illustrations, some of which depend on color for proper interpretation. The code reviser has deemed it inexpedient to convert these regulations and illustrations to the prescribed form and style of WAC and therefore excludes them from publication. The document is available for public inspection at the headquarters office and all region offices of the Washington state department of transportation. Further, each city, town, and county engineering office in the state will have a copy of the MUTCD, with revisions and modifications for Washington, in its possession.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-010, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-010, filed 2/28/03, effective 3/31/03; 91-02-008 (Order 127), § 468-95-010, filed 12/21/90, effective 1/21/91. Statutory Authority: RCW 47.36.030. 87-05-043 (Order 108), § 468-95-010, filed 2/18/87; 85-23-041 (Order 98), § 468-95-010, filed 11/18/85; 85-01-056 (Order 93), § 468-95-010, filed 12/17/84.]

**WAC 468-95-015 Compliance dates.** On page I-5 of the introduction, the reference to Section 3B.19 is revised to read:

Pavement word and symbol markings - The Department of Transportation's Standard Plans illustrate the typical size and spacing of lane-use arrows for two-way left-turn lanes. Compliance with the Standard Plans shall be achieved when lane-use arrows, in existence in two-way left-turn lanes on December 31, 2004, have completed their life cycle and require replacement.

[2006 WAC Supp—page 2010]

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-015, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-027 Stop sign placement.** Amend the first paragraph of the first standard of MUTCD Section 2B.06 to read:

The STOP sign shall be installed on the right side of the approach to which it applies. When the STOP AHEAD sign is installed at this required location, see Section 2C.29 and Table 2C-4 to determine if a STOP AHEAD sign is required in advance of the STOP sign.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-027, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-033 In-street pedestrian crossing sign (R1-6a).** Delete sign R1-6 from MUTCD Figure 2B-2, and amend MUTCD Section 2B.12 to read:

Option:

The In-Street Pedestrian Crossing (R1-6a) sign (see Figure 2B-2) may be used to remind road users of laws regarding right of way at an unsignalized pedestrian crossing. The legend STATE LAW may be shown at the top of the sign if applicable. The legend STOP FOR may be used in conjunction with the appropriate symbol.

Guidance:

If an island (see Chapter 3G) is available, the In-Street Pedestrian Crossing sign, if used, should be placed on the island.

Standard:

The In-Street Pedestrian Crossing sign shall not be used at signalized locations.

The STOP FOR legend shall only be used in States where the State law specifically requires that a driver stop for a pedestrian in a crosswalk.

If used, the In-Street Pedestrian Crossing sign shall have a black legend (except for the red STOP sign symbol) and border on either a white and/or fluorescent yellow-green background.

If the In-Street Pedestrian Crossing sign is placed in the roadway, the sign support shall comply with the breakaway requirements of the latest edition of AASHTO's "Specification for Structural Supports for Highway Signs, Luminaries, and Traffic Signals" (see Page i).

Support:

The provisions of Section 2A.18 concerning mounting height are not applicable for the In-Street Pedestrian Crossing sign.

Option:

The In-Street Pedestrian Crossing sign may be used seasonally to prevent damage in winter because of plowing operations, and may be removed at night where pedestrian activity is minimal.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-033, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-045 Speed limit sign (R2-1).** Revise MUTCD Section 2B.13 to read:

Standard:

Speed Limits (R2-1) signs (see Figure 2B-1) shall display the speed limit established by statute; or, by an ordinance or regulation adopted by the authorized agency, based

on the engineering study or traffic investigation required by RCW 46.61.405, 46.61.410, and 46.61.415. The speed limit shall be set in multiples of 10 km/h or 5 mph.

**Guidance:**

Authorized agencies should reevaluate speed limits on segments of their roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review.

No more than three speed limits should be posted on any one Speed Limit sign or assembly.

When evaluating speed limits, the following factors should be considered:

A. The 85th percentile speed of vehicles traveling on the road;

B. Road characteristics, shoulder condition, grade, alignment, and sight distance;

C. The pace speed;

D. Roadside development and environment;

E. Parking practices and pedestrian activity;

F. Reported crash experience for at least a 12 month period; and

G. Other factors such as route development or comprehensive plans.

**Option:**

Two types of Speed Limit signs may be used: One to designate passenger car speeds, including any nighttime information or minimum speed that may apply; and, the other to show any special speed limits for trucks and other vehicles.

A changeable message sign that changes the speed limit for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times.

A changeable message sign that displays to drivers the speed at which they are traveling may be installed in conjunction with a Speed Limit sign.

**Guidance:**

If a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX km/h (mph) or such similar legend should be shown. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.

**Support:**

Advisory Speed signs are discussed in Sections 2C.36 and 2C.46. Temporary Traffic Control Zone Speed signs are discussed in Part 6.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-045, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-120 Traffic signal signs.** Pursuant to RCW 46.61.055, amend the second Standard of MUTCD Section 2B.45 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit any right turn on red; or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-120, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-120, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-125 Hill blocks view sign.** Delete Section 2C.14 and sign W7-6 from the MUTCD.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-125, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-131 Bridge ices before road sign.** Delete Section 2C.28 and sign W8-13 from the MUTCD.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-131, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-132 Advisory exit, ramp, and curve speed signs (W13-2, W13-3, and W13-5).** Delete the fourth paragraph of the Option statement and the Support statement from MUTCD Section 2C.36.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-132, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-133 Intersection warning signs (W2-1 through W2-6).** Revise the Option in MUTCD Section 2C.37 to read:

A Cross Road (W2-1) symbol sign, Side Road (W2-2 or W2-3) symbol sign, T (W2-4) symbol sign, or Y (W2-5) symbol sign (see Figure 2C-8) may be installed in advance of an intersection to indicate the intersection's presence and the possibility of turning traffic.

The Circular Intersection (W2-6) symbol sign may be installed in advance of a circular intersection. The Circular Intersection symbol sign may be accompanied by a ROUNDABOUT or a TRAFFIC CIRCLE educational plaque, as applicable.

The relative importance of the intersecting roadways may be shown by different widths of lines in the symbol.

The advance street name plaque (see Section 2C.49) may be installed above or below an Intersection Warning sign.

Add the alternate message ROUNDABOUT to the TRAFFIC CIRCLE plaque (W16-12p) in MUTCD Figure 2C-8.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-133, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-134 Advisory speed plaques (W13-1).** Delete the second Option statement and the Support statement from MUTCD Section 2C.46.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-134, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-135 Cross traffic does not stop plaque (W4-4p).** Revise the Standard in MUTCD Section 2C.50 to read:

If the W4-4p plaque is used with a STOP sign, it shall be installed below the STOP sign.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-135, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-140 Signing to regional shopping centers.** Pursuant to RCW 47.36.270, a regional shopping center may be signed as a supplemental guide sign destination from state highways in accordance with the applicable sections of MUTCD Part II-D, Guide Signs - Conventional Roads, and MUTCD Part II-E Guide Signs - Freeways and Expressways, and in accordance with subsections (1) through (8) of this section.

(1) There shall be at least 500,000 square feet of leasable retail floor space;

(2) There shall be at least three major department stores owned by national or regional retail chain organizations;

(3) The center shall be located within one highway mile of the state highway;

(4) The center shall generate at least 9,000 daily one-way vehicle trips to the center;

(5) Sufficient sign space as specified in the MUTCD shall be available for installation;

(6) Supplemental follow-through directional signing is required on county roads or city streets at key motorist decision points, if the center is not clearly visible from the point of exit from the state highway. The required supplemental follow-through directional signs shall be installed by the city or county prior to the installation of signs on the state highway;

(7) Signing on the state highway to a county road or city street that bears the name of the regional shopping center fulfills the statutory requirements for signing to those centers;

(8) The costs of materials and labor for fabricating, installing, and maintaining regional shopping center signs shall be borne by the center.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-140, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-140, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-143 Street name sign (D3-1).** Amend the fourth guidance of MUTCD Section 2D.38 to read:

In urban or suburban areas, especially where Advanced Street name signs are not used, the use of overhead Street Name signs should be considered. If overhead Street Name signs are used, the lettering should be at least 300 mm (12 in) high in capital letters, or 300 mm (12 in) upper-case with 225 mm (9 in) lower case letters where posted speeds are 40 mph or greater. For roads with posted speeds less than 40 mph, lettering should be 8 inch capital letters or greater. New construction should include the larger size letters for overhead signs. Internally illuminated signs may use smaller letter size.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-143, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-147 General design requirements for recreational and cultural interest area symbol signs.** Amend MUTCD Section 2H.04, Table 2H-1 and Figure 2H-5, to include the wildlife viewing (binocular symbol) sign and to read:

A wildlife viewing sign shall be square shaped with a white binocular symbol and border on a brown background.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-147, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-148 Event signs, banners, and decorations.** Add a new MUTCD Chapter 2J to read:

Chapter 2J, Event Signs, Banners, and Decorations

Pursuant to RCW 47.36.030(3) and 47.42.020(8), the department may permit signs, banners, or decorations visible to state highways that promote a local agency sponsored event in accordance with the applicable following criteria:

Standard:

A. Signs, banners, and decorations shall not interfere or obstruct the view of any traffic control device or impair the

operation of transportation management systems or street illumination.

B. The sign, banner, or decoration shall not include commercial advertising as determined by the department.

C. Signs, banners, or decorations shall be mounted not less than 20 vertical feet above the roadway surface measured at any point.

D. Signs, banners, or decorations shall not be visible from Interstate highways, or other state highways having a posted speed limit of 50 miles per hour or greater.

E. Signs, banners, or decorations shall be installed no more than 30 days before and removed no more than 3 days after the local agency sponsored event.

Option:

Along multi-lane state highways a sign, banner, or decoration may be mounted vertically on luminaire posts subject to meeting wind load requirements specified by the department.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-148, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-150 No passing zone markings.** Amend the third Standard of MUTCD Section 3B.02, to read:

On two-way, two- or three-lane roadways where centerline markings are installed, no-passing zones shall be established at vertical curves and other locations where an engineering study indicates that passing must be prohibited because of inadequate sight distances or other special conditions.

On two-way, two- and three-lane roadways where centerline markings are installed, no-passing zones shall be established at horizontal curves where an engineering study indicates passing must be prohibited because of inadequate sight distances or other special conditions. A January 17, 2007, compliance date is established.

On three-lane roadways where the direction of travel in the center lane transitions from one direction to the other, a no-passing buffer zone shall be provided in the center lane as shown in Figure 3B-4. A lane transition shall be provided at each end of the buffer zone.

The buffer zone shall be a median island that is at least 15 m (50 ft) in length.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-150, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-150, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-160 Other yellow longitudinal markings.** Pursuant to RCW 46.61.150, amend the second Standard of MUTCD Section 3B.03 to read:

If a continuous median island formed by pavement markings separating travel in opposite directions is used, the island may be formed by two single normal solid yellow lines, a combination of two single normal solid yellow lines with yellow crosshatching between the lines with a total width not less than eighteen inches, two sets of double solid yellow lines, or a solid yellow line not less than eighteen inches in width. All other markings in the median island area shall be yellow, except crosswalk markings, which shall be white (see Section 3B.17).



[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-160, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-160, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-190 Pavement edge lines and raised pavement markers supplementing other markings.** Pursuant to RCW 47.36.280, the Standard in MUTCD Section 3B.07, is revised to read:

Edge lines shall be used on all interstate highways, rural multilane divided highways, all principal arterials and minor arterials within urbanized areas, except when curb or sidewalk exists, and may be used on other classes of roads. A jurisdiction shall conform to these requirements at such time that it undertakes to renew or install permanent markings on new or existing roadways. The edge lines shall be white, except that the edge lines shall be yellow on the left edge of each roadway of divided streets and highways and one-way roadway in the direction of travel.

Edge line markings shall also be placed on paved rural arterials with a traveled way of 6.1 m (20 ft) or more in width and an ADT of 6,000 or greater vehicles per day.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-190, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-190, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-205 Raised pavement markers supplementing other markings.** Pursuant to RCW 47.36.280, amend the first paragraph of the Option in MUTCD Section 3B.13 to read:

Raised pavement markers may also be used to supplement other markings for channelizing islands or approaches to other objects. The general use of raised pavement markers along right edge lines is strongly discouraged because the markers can cause steering difficulties and make bicyclists lose control of their vehicles. Raised or recessed pavement markers may be used along right edge lines on the taper in lane transition sections, on approaches to objects, and within channelization at intersections. Raised or recessed pavement markers can only be used along right edge lines at other locations where an engineering study has determined that the markers are essential to preserving pedestrian, bicycle, and motor vehicle safety. At the initiation of the engineering study, local bicycling organizations, the regional member of the state bicycle advisory committee, or the WSDOT bicycle and pedestrian program manager shall be notified of the study for review and comment. Positioning and spacing of the markers in such cases must be determined by engineering judgment taking into consideration their effect on bicycle, pedestrian, and motor vehicle safety; and, where used, are spaced closely enough (no greater than 3 m (10 ft) apart) to approximate the appearance of a solid line. Other applications of raised or recessed pavement markers along right edge lines of arterials are considered to be nonconforming with this section. Cities and counties shall remove their nonconforming raised or recessed pavement markers at the time that they prepare to resurface roadways, or earlier at their option.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-205, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-210 Raised pavement markers substituting for pavement markings.** Amend the first sentence in the first Standard of MUTCD Section 3B.14 to read:

If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than  $N/8$  (see Section 3B-11), or at the one-third points of the line segment if  $N$  is other than 12 m (40 ft), with a least one retroreflective or internally illuminated marker used per group.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-210, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-210, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-220 Stop and yield lines.** Amend the second Guidance of MUTCD Section 3B.16 to read:

If used, stop and yield lines should be placed a minimum of 1.2 m (4 ft) in advance of the nearest crosswalk line at controlled intersections, except for yield lines at roundabout intersections as provided for in Section 3B.24 and at midblock crosswalks. In the absence of a marked crosswalk, the stop line or yield line should be placed at the desired stopping or yielding point, in no case less than 4 feet from the nearest edge of the intersecting roadway. Stop lines should be placed to allow sufficient sight distance to all other approaches to an intersection.

If used at an unsignalized midblock crosswalk, yield lines should be placed adjacent to the Yield Here to Pedestrians sign located 6.1 to 15 m (20 to 50 ft) in advance of the nearest crosswalk line, and parking should be prohibited in the area between the yield line and the crosswalk (see Figure 3B-15). Stop lines at midblock signalized locations should be placed at least 12 m (40 ft) in advance of the nearest signal indication (see Section 4D.15).

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-220, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-220, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-235 Preferential lane word and symbol markings.** Add a guidance statement following the first Standard of MUTCD Section 3B.22 to read:

Guidance:

Preferential lane word and symbol markings may be offset up to a maximum of 1'0" from the center of the preferred-use lane to avoid vehicle wheel paths.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-235, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-250 Meaning of signal indications.** Pursuant to RCW 46.61.055, amend the second paragraph of the Standard of MUTCD Section 4D.04, item C.1, to read:

Vehicle operators facing a steady circular red signal may, after stopping, proceed to make a right turn from a one-

way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

Pursuant to RCW 46.61.055, amend the Standard of MUTCD Section 4D.04, item C.2, to read:

Vehicle operators facing a steady red arrow indication may, after stopping, proceed to make a right turn from a one-way or two-way street or into a one-way street carrying traffic in the direction of the right turn, or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn, unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-250, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-250, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-260 Application of steady signal indications.** Pursuant to RCW 46.61.055, amend the Standard of MUTCD Section 4D.05, item D, to read:

A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-260, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-260, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-270 Meaning of lane-use control indications.** Pursuant to RCW 46.61.072, amend the Standard of MUTCD Section 4J.02, paragraph B, to read:

A steady YELLOW X or a flashing RED X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady RED X is displayed.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-270, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-270, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-280 Operation of lane-use control signals.** Pursuant to RCW 46.61.072, in MUTCD Section 4J.04, amend the first sentence of the first paragraph after item G in the first Standard to read:

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A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-280, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-280, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-29001 Traffic control devices for low-volume roads—Application.** Change the Guidance of MUTCD Section 5A.02, Application, to become an Option and amend to read:

Additional traffic control devices and criteria contained in other Parts of the Manual may be considered for use on low-volume roads.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29001, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29003 Traffic control devices for low-volume roads—Design.** Change the Guidance of MUTCD Section 5A.03, Design, to become an Option and amend to read:

Oversized sign sizes may be used where engineering judgment indicates a need based on high vehicle operating speeds, driver expectancy, traffic operations, or roadway conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29003, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29005 Traffic control devices for low-volume roads—Stop and yield signs.** Change the Guidance of MUTCD Section 5B.02, Stop and Yield Signs, to become an Option and amend to read:

STOP (R1-1) and YIELD (R1-2) signs (see Figure 5B-1) may be considered for use on low-volume roads where engineering judgment or study, consistent with the provisions of Sections 2B.04 to 2B.10, indicates that either of the following conditions applies:

A. An intersection of a less-important road with a main road where application of the normal right-of-way rule might not be readily apparent.

B. An intersection that has restricted sight distance for the prevailing vehicle speeds.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29005, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29007 Traffic control devices for low-volume roads—One lane bridges.** Change the Guidance of MUTCD Section 5C.06, One Lane Bridges, to become an Option and amend to read:

A ONE LANE BRIDGE (W5-3) sign (see Figure 5C-2) may be used on low-volume two-way roadways in advance of any bridge or culvert:

A. Having a clear roadway width of less than 4.9 m (16 ft); or

B. Having a clear roadway width of less than 5.5 m (18 ft) when commercial vehicles constitute a high proportion of the traffic; or

C. Having a clear roadway width of 5.5 m (18 ft) or less where the approach sight distance is limited on the approach to the structure.

Additional warning may be provided on the approach to a one lane bridge or culvert by the use of object markers and/or delineators.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29007, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29009 Traffic control devices for low-volume roads—Vehicular traffic and nonvehicular signs.** Change the first Guidance of MUTCD Section 5C.09, Vehicular Traffic and Nonvehicular Signs (W11 Series and W8-6), to become an Option and amend to read:

Vehicular Traffic signs (see Figure 5C-2) may be used to alert road users to frequent unexpected entries into the roadway by trucks, bicyclists, farm vehicles, fire trucks, and other vehicles. Such signs may be used only at locations where the road user's sight distance is restricted or the activity would be unexpected.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29009, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29011 Traffic control devices for low-volume roads—Centerline markings.** Change the Guidance of MUTCD Section 5E.02, Centerline Markings, to become an Option and amend to read:

Centerline markings may be used on paved low-volume roads where engineering judgment or an engineering study indicates a need for them.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29011, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29013 Traffic control devices for low-volume roads—Edgeline markings.** Change the Guidance of MUTCD Section 5E.03, Edgeline Markings, to become an Option and amend to read:

Edgeline Markings may be considered for use on paved low-volume roads based on engineering judgment or an engineering study.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29013, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29015 Traffic control devices for low-volume roads—Delineators.** Change the Option of MUTCD Section 5E.04, Delineators, to read:

Delineators may be used on low-volume roads based on engineering judgment, such as for curves, T-intersections, and abrupt changes in the roadway width. In addition, they may be used to mark other minor roads entering the low-volume road.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29015, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29017 Traffic control devices for low-volume roads—Object markers.** Change the Guidance of MUTCD Section 5E.05, Object Markers, to become an Option and amend to read:

The end of a low-volume road may be marked with an end-of-roadway marker in conformance with Section 3C.04.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29017, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29019 Traffic control devices for low-volume roads—Pavement markings.** Change the Guidance of MUTCD Section 5F.05, Pavement Markings, to become an Option and amend to read:

Pavement markings at highway-rail grade crossings may be used on paved low-volume roads, if they are already deployed at most other highway-rail grade crossings within the immediate vicinity, or when the roadway has centerline markings.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29019, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-29021 Traffic control devices for low-volume roads—Markings.** Change the Guidance of MUTCD Section 5G.04, Markings, to become an Option and amend to read:

Pavement markings may be considered for temporary traffic control zones on paved low-volume roads, especially roads that had existing pavement markings or that have a surfaced detour or temporary roadway.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-29021, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-300 Temporary traffic control.** Amend MUTCD Table 6C-1 to read:

#### Sign Spacing (1)

Freeways & Expressways	55/70 MPH	1500' ± or per MUTCD
Rural Highways	60/65 MPH	800' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads & Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Arterials, Residential, Business Districts	25/30 MPH	200' ± (2)
Urban Streets	25 MPH or less	100' ± (2)

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-300, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-300, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-303 Sign placement.** Amend the second paragraph of the first Standard of MUTCD Section 6F.03 to read:

Signs mounted on barricades and barricade/sign combinations shall be crashworthy, in accordance with NCHRP 350, by December 31, 2007.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-303, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-305 Motorcycle construction warning sign.** Pursuant to RCW 47.36.200, a warning sign displaying the word message MOTORCYCLES USE EXTREME CAUTION is added to MUTCD Figure 6F-4. The sign shall be diamond shaped with black letters on an orange background.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-305, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-306 Motorcycles use extreme caution supplemental plaque.** A supplemental plaque displaying the message MOTORCYCLES USE EXTREME CAUTION is added to MUTCD Figure 6F-4.

The plaque may supplement primary condition warning signs.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-306, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-307 Abrupt lane edge warning sign.** A warning sign displaying the word message ABRUPT LANE EDGE is added to MUTCD Figure 6F-4. The sign shall be diamond shaped with black letters on an orange background.

The sign shall be used where Section 1-07.23(1) of the Washington state department of transportation's standard specifications require warning signs to alert drivers about an elevation differential between lanes or between the outside lane and the shoulder.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-307, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-310 Temporary pavement markings.** Amend MUTCD Section 6F.66 to read:

Standard:

All temporary pavement markings shall conform to the requirements of Chapters 3A and 3B. All temporary broken-line pavement markings shall use the same cycle length as permanent markings and be at least 0.6 m (2 ft) long.

Support:

Temporary pavement markings are those that may be used until it is practical and possible to install permanent markings.

Option:

Half-cycle lengths with a minimum of 0.6 m (2 ft) stripes may be used on roadways with severed curvature (see Section 3A.05) for center lines in passing zones and for lane lines.

For temporary situations, for a two-lane or three-lane road, no-passing zones may be identified by using DO NOT PASS (R4-1), PASS WITH CARE (R4-2), and NO PASSING ZONE (W14-3) signs rather than pavement markings.

Guidance:

When used, the DO NOT PASS, PASS WITH CARE, and NO PASSING ZONE signs should be placed in accordance with Sections 2B.29, 2B.30, and 2C.35.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-310, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-310, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-317 Temporary traffic control.** Amend MUTCD Table 6H-3 to read:

#### Sign Spacing<sup>(1)</sup>

Freeways & Expressways	55/70 MPH	1500' ± or per MUTCD
Rural Highways	60/65 MPH	800' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads & Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Arterials, Residential, Business Districts	25/30 MPH	200' ± <sup>(2)</sup>
Urban Streets	25 MPH or less	100' ± <sup>(2)</sup>

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-317, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-325 In-street signs in school areas.** Delete sign R1-6 from MUTCD Figure 7B-4 and amend the first Option of MUTCD Section 7B.08 to read:

A 300 mm (12 in) reduced size in-street School Advance Warning (S1-1) sign (see Figure 7B-4), installed in compliance with the mounting height and breakaway requirements for In-Street Pedestrian Crossing (R1-6a) signs (see Section 2B.12), may be used in advance of a school crossing to supplement the ground-mounted school warning signs. A 300 mm x 150 mm (12 in x 6 in) reduced size AHEAD (W16-9p) plaque may be mounted below the reduced size in-street School Advance Warning (S1-1) sign.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-325, filed 11/3/05, effective 12/4/05.]

**WAC 468-95-330 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1).** Pursuant to RCW 46.61.440, the first Guidance in MUTCD Section 7B.11 is replaced with a Standard to read:

Applicable to state highways, county roads, or city streets, the reduced school or playground speed zone shall extend for 300 feet in either direction from the marked crosswalk when the marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs.

Applicable to county roads or city streets, the school or playground speed zone may extend up to 300 feet from the border of the school or playground property when fully posted with standard school speed limit signs or standard playground speed limit signs. However, the speed zone may only include the area consistent with active school or playground use.

No school or playground speed zone may extend less than 300 feet from a marked school or playground crosswalk, but may extend by traffic regulation beyond 300 feet based on a traffic and engineering investigation.

Pursuant to RCW 46.61.440, the speed limit sign distance note in Figure 7B-3 is replaced with:

See WAC 468-95-330 for school or playground speed limit placement distances.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-330, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter

34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-330, filed 2/28/03, effective 3/31/03.]

**WAC 468-95-340 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1).** Amend the second Standard of MUTCD Section 7B.11 to read:

The School Speed Limit assembly shall be either a fixed-message sign assembly or a changeable message sign. The fixed-message School Speed Limit assembly shall consist of a top plaque (S4-3) with the legend SCHOOL, a Speed Limit (R2-1) sign, and a bottom plaque (S4-1, S4-2, S4-4, S4-6, or S4-501) indicating the specific periods of the day and/or days of the week that the special school speed limit is in effect (see Figure 7B-1).

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-340, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-340, filed 2/28/03, effective 3/31/03.]

### WAC 468-300-010 Ferry passenger tolls.

**EFFECTIVE 03:00 A.M. JUNE 1, 2005**

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Commuter 20 Rides <sup>1</sup>	Monthly Pass <sup>5</sup>	Bicycle Surcharge <sup>2,6</sup>
Via Passenger-Only Ferry						
*Seattle-Vashon	8.10	4.00	6.90	68.80	110.10	1.00
Via Auto Ferry						
*Fauntleroy-Southworth	4.70	2.30	3.80	37.60	60.20	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island						
*Edmonds-Kingston	6.10	3.00	4.90	48.80	78.10	1.00
Port Townsend-Keystone	2.35	1.15	1.90	37.60	60.20	0.50
*Fauntleroy-Vashon						
*Southworth-Vashon						
*Pt. Defiance-Tahlequah	4.00	2.00	3.20	32.00	51.20	1.00
*Mukilteo-Clinton	3.60	1.80	2.90	28.80	46.10	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday	9.10	4.50	7.30	65.70	N/A	2.00 <sup>7</sup>
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Sat- urday	10.10	5.00	8.10	65.70	N/A	2.00 <sup>7</sup>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	14.70	7.30	11.80	N/A	N/A	4.00 <sup>8</sup>
From Lopez, Shaw, Orcas and Fri- day Harbor to Sidney <sup>@</sup>	5.50	2.75	4.50	N/A	N/A	1.00 <sup>9</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	20.20	10.05	16.30	N/A	N/A	5.00 <sup>10</sup>

<sup>@</sup> These fares rounded to the next multiple of \$.25. All other fares rounded to the next multiple of \$.10.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>FREQUENT USER COUPONS - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Unused coupons will not be eligible for refund or exchange. Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a 20 ride card valid for 90 days from the date of purchase. For mail order deliveries, WSF may add additional days to allow for delivery times. Starting May 1, 2006, purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers qualifying for the senior/disabled and youth fares.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

<sup>3</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. It is valid for the period printed on the pass and will be presented to Washington state ferries staff whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount. Passes may be available in monthly, quarterly or annual denominations.

**WAC 468-95-370 Pavement markings for obstructions.** Amend MUTCD Figure 9C-8, to show a normal solid white line instead of a wide solid white line.

[Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030. 05-23-003, § 468-95-370, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-370, filed 2/28/03, effective 3/31/03.]

### Chapter 468-300 WAC

### STATE FERRIES AND TOLL BRIDGES

(Formerly chapter 252-300 WAC.)

#### WAC

468-300-010

468-300-020

468-300-040

468-300-220

Ferry passenger tolls.

Vehicle under 20', motorcycle, and stowage ferry tolls.

Oversize vehicle ferry tolls.

Calculation of charter rates for vessels owned by the Washington state ferry system.

<sup>6</sup>BICYCLE PASS - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (first Sunday in May until second Sunday in October).

<sup>8</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

<sup>9</sup>BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

<sup>10</sup>BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$0.10.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. Starting September 1, 1999, all school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiple trip books as a customer convenience. These books shall be valid only until the first of May following the date of purchase, after which time the coupons shall not be accepted for passage. Unused coupons are not refundable. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from the first Sunday in May to the second Sunday in October, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

[Statutory Authority: RCW 47.56.030, 47.60.326, 05-10-041, § 468-300-010, filed 4/28/05, effective 6/1/05; 03-08-072, § 468-300-010, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-010, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-010, filed 5/3/01, effective 6/3/01; 00-24-050, § 468-300-010, filed 11/30/00, effective 12/31/00; 99-08-066, § 468-300-010, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-010, filed 3/27/98, effective 4/27/98; 96-05-046 and 96-05-047 (Orders 79 and 80), § 468-300-010, filed 2/16/96, effective 3/19/96; 94-18-014 (Order 77), § 468-300-010, filed 8/25/94, effective 9/25/94; 94-07-104 (Order 75), § 468-300-010, filed 3/18/94, effective 4/18/94; 93-18-005, § 468-300-010, filed 8/19/93, effective 9/19/93; 92-18-005, § 468-300-010, filed 8/20/92, effective 9/20/92; 91-18-022 (Order 72), § 468-300-010, filed 8/27/91, effective 9/27/91; 89-14-052 (Order 67, Resolution No. 354), § 468-300-010, filed 6/30/89; 89-04-014 (Order 66, Resolution No. 343), § 468-300-010, filed 1/23/89, effective 7/1/89; 87-12-005 (Order 61, Resolution No. 298), § 468-300-010, filed 5/21/87. Statutory Authority: RCW 47.60.290, 47.60.300 and 47.60.326, 86-24-009 (Order 59, Resolution No. 287), § 468-300-010, filed 11/21/86. Statutory Authority: RCW 47.60.326, 86-06-010 (Order 54, Resolution No. 263), § 468-300-010, filed 2/21/86; 85-11-007 (Order 44, Resolution No. 241), § 468-300-010, filed 5/3/85; 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-010, filed 5/17/84; 84-10-002 (Order 41, Resolution No. 218), § 468-300-010, filed 4/20/84; 83-07-062 (Order 33, Resolution No. 175), § 468-300-010, filed 3/22/83; 82-07-063 (Order 28, Resolution No. 143), § 468-300-010, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030, 81-15-099 (Order 23, Resolution No. 117), § 468-300-010, filed 7/22/81. Statutory Authority: RCW 47.60.325, 81-08-044 (Order 17, Resolution No. 104), § 468-300-010, filed 3/31/81; 80-16-012 (Order 16, Resolution No. 90), § 468-300-010, filed 10/27/80; 80-04-104 (Order 15, Resolution No. 72), § 468-300-010, filed 4/1/80; 79-09-136 (Order 11, Resolution No. 57), § 468-300-010, filed 9/5/79; 79-04-047 (Order 6, Resolution No. 44), § 468-300-010, filed 3/27/79; 78-06-040 (Order 2, Resolution No. 21), § 468-300-010, filed 5/19/78.]

### WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

**EFFECTIVE 03:00 A.M. JUNE 1, 2005**

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Commuter 20 Rides <sup>2</sup>
Fauntleroy-Southworth Port Townsend/Key-stone	8.20	7.00	8.20	131.20
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	10.60	9.05	10.60	169.60

# State Ferries and Toll Bridges

468-300-020

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Commuter 20 Rides <sup>2</sup>
*Fauntleroy-Vashon *Southworth-Vashon				
*Pt. Defiance-Tahlequah	13.60	11.60	13.60	108.80
Mukilteo-Clinton	6.30	5.40	6.30	100.80
10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	22.00	17.40	22.00	91.50
*Lopez - Wednesday-Saturday	24.40	19.30	24.40	91.50
*Shaw, Orcas - Sunday-Tuesday	26.40	21.80	26.40	109.90
*Shaw, Orcas - Wednesday-Saturday	29.30	24.20	29.30	109.90
*Friday Harbor - Sunday-Tuesday	31.40	26.80	31.40	130.50
*Friday Harbor - Wednesday-Saturday	34.80	29.70	34.80	130.50
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	13.90	13.90	13.90	55.60
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	39.50	32.10	39.50	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	24.50	17.10	39.50	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	11.75	9.00	11.75	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>7</sup>	4.75	2.00	11.75	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	51.25	41.10	51.25	N/A

## EFFECTIVE 03:00 A.M. JUNE 1, 2005

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Commuter 20 Rides <sup>2</sup> @
Fauntleroy-Southworth Port Townsend/Key-stone	3.60	2.40	1.25	57.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	4.60	3.05	1.55	73.60
*Fauntleroy-Vashon *Southworth-Vashon				
*Pt. Defiance-Tahlequah	6.00	4.00	2.00	48.00
Mukilteo-Clinton	2.70	1.80	0.90	43.20
*Anacortes to Lopez - Sunday-Tuesday	11.70	7.10	2.60	97.50
*Lopez - Wednesday-Saturday	13.00	7.90	2.90	97.50
*Shaw, Orcas - Sunday-Tuesday	12.60	8.00	3.50	105.00
*Shaw, Orcas - Wednesday-Saturday	14.00	8.90	3.90	105.00
*Friday Harbor - Sunday-Tuesday	13.60	9.00	4.50	113.30
*Friday Harbor - Wednesday-Saturday	15.10	10.00	5.00	113.30
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	4.00	4.00	4.00	N/A
Anacortes to Sidney and Sidney to all destinations	19.75	12.35	5.05	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	7.25	4.50	1.75	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>7</sup>	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	27.00	16.85	6.80	N/A

@ These fares rounded to the next multiple of \$0.10. All other fares rounded to the next multiple of \$.25.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

<sup>2</sup>FREQUENT USER COUPONS - Shall be valid only for 90 days from date of purchase after which time the ticket shall not be accepted for passage. Unused coupons will not be eligible for refund. Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a 20 ride (10 ride in the San Juan Islands) card valid for 90 days from the date of purchase. From mail order deliveries, WSF may add additional days to allow for delivery time. Starting on May 1, 2006, purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers qualifying for the senior/disabled and youth fares.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>7</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from the first Sunday in May to the second Sunday in October except those using frequent user coupons. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using frequent user coupons.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiple trip books as a customer convenience. These books shall be valid only until the first of May following the date of purchase after which time the coupons shall not be accepted for passage. Unused coupons are not refundable. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

[Statutory Authority: RCW 47.56.030, 47.60.326, 05-10-041, § 468-300-020, filed 4/28/05, effective 6/1/05; 03-08-072, § 468-300-020, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-020, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-020, filed 5/3/01, effective 6/3/01; 00-24-050, § 468-300-020, filed 11/30/00, effective 12/31/00; 99-08-066, § 468-300-020, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-020, filed 3/27/98, effective 4/27/98; 96-19-045 (Order 82), § 468-300-020, filed 9/12/96, effective 10/13/96; 94-18-014 (Order 77), § 468-300-020, filed 8/25/94, effective 9/25/94; 94-07-104 (Order 75), § 468-300-020, filed 3/18/94, effective 4/18/94; 93-18-005, § 468-300-020, filed 8/19/93, effective 9/19/93; 92-18-005, § 468-300-020, filed 8/20/92, effective 9/20/92; 91-18-022 (Order 72), § 468-300-020, filed 8/27/91, effective 9/27/91; 89-14-052 (Order 67, Resolution No. 354), § 468-300-020, filed 6/30/89; 89-04-014 (Order 66, Resolution No. 343), § 468-300-020, filed 1/23/89, effective 7/1/89; 87-12-005 (Order 61, Resolution No. 298), § 468-300-020, filed 5/21/87. Statutory Authority: RCW 47.60.326, 86-06-010 (Order 54, Resolution No. 263), § 468-300-020, filed 2/21/86; 85-11-007 (Order 44, Resolution No. 241), § 468-300-020, filed 5/3/85; 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-020, filed 5/17/84; 84-10-002 (Order 41, Resolution No. 218), § 468-300-020, filed 4/20/84; 83-07-062 (Order 33, Resolution No. 175), § 468-300-020, filed 3/22/83; 82-07-063 (Order 28, Resolution No. 143), § 468-300-020, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030, 81-15-099 (Order 23, Resolution No. 117), § 468-300-020, filed 7/22/81. Statutory Authority: RCW 47.60.325, 81-08-044 (Order 17, Resolution No. 104), § 468-300-020, filed 3/31/81; 80-04-104 (Order 15, Resolution No. 72), § 468-300-020, filed 4/1/80; 79-09-136 (Order 11, Resolution No. 57), § 468-300-020, filed 9/5/79; 79-04-047 (Order 6, Resolution No. 44), § 468-300-020, filed 3/27/79; 78-06-040 (Order 2, Resolution No. 21), § 468-300-020, filed 5/19/78.]

## WAC 468-300-040 Oversize vehicle ferry tolls.

**EFFECTIVE 03:00 A.M. JUNE 1, 2005**

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth Port Townsend/Keystone	12.50	24.60	32.80	41.00	49.20	57.40	65.60	0.90
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	16.00	31.80	42.40	53.00	63.60	74.20	84.80	1.10
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	20.50	40.80	54.40	68.00	81.60	95.20	108.80	1.40
Mukilteo-Clinton	9.50	18.90	25.20	31.50	37.80	44.10	50.40	0.70



ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup> Overall Unit Length - Including Driver							Cost Per Ft. Over 80' @
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
*Anacortes to Lopez - Sunday-Tuesday <sup>2</sup>	33.00	66.00	88.00	110.00	132.00	154.00	176.00	2.20
*Anacortes to Shaw, Orcas - Sunday-Tuesday <sup>2</sup>	39.75	79.20	105.60	132.00	158.40	184.80	211.20	2.70
*Anacortes to Friday Harbor - Sunday-Tuesday	43.50	87.00	116.00	145.00	174.00	203.00	232.00	2.90
*Anacortes to Lopez - Wednesday-Saturday <sup>2</sup>	36.75	73.20	97.60	122.00	146.40	170.80	195.20	2.50
*Anacortes to Shaw, Orcas - Wednesday-Saturday <sup>2</sup>	44.00	87.90	117.20	146.50	175.80	205.10	234.40	3.00
*Anacortes to Friday Harbor - Wednesday-Saturday	48.00	96.00	128.00	160.00	192.00	224.00	256.00	3.20
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	21.00	41.70	55.60	69.50	83.40	97.30	111.20	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	59.25	59.25	79.00	98.75	118.50	138.25	158.00	2.00
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	59.25	118.50	158.00	197.50	237.00	276.50	316.00	4.00
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations - Recreational Vehicles and Buses	44.25	44.25	64.00	83.75	103.50	123.25	143.00	2.00
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations <sup>5</sup> - Commercial Vehicles	44.25	103.25	143.00	182.50	222.00	261.50	301.00	4.00
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses - Commercial Vehicles	17.75	17.75	23.50	29.50	35.25	41.25	47.00	0.75
Travelers with advanced reservations (\$7 fee) from	17.75	-35.25	-47.00	-58.75	70.50	-82.25	-94.00	1.20
Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>6</sup> - Recreational Vehicles and Buses - Commercial Vehicles	10.75	10.75	16.50	22.50	28.25	34.25	40.00	0.60
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup> - Recreational Vehicles and Buses - Commercial Vehicles	-10.75	-28.25	40.00	-51.75	63.50	75.25	-87.00	0.60
	77.00	77.00	102.30	128.25	153.75	179.50	205.00	2.75
	77.00	153.75	205.00	256.25	307.50	358.75	410.00	5.20

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles 11 feet in width or wider pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: June 1, 2005 - April 30, 2007, \$37.50 base season, \$50.00 peak season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.

PEAK SEASON SURCHARGE - A peak season surcharge of 25% shall apply to all oversize vehicles, except for Anacortes to Lopez, Shaw, Orcas, and Friday Harbor. The senior citizen discount shall apply to the driver of an oversize vehicle. A 35% surcharge will apply to oversized vehicles traveling from Anacortes to Lopez, Shaw, Orcas and Friday Harbor.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**DISCOUNT FROM REGULAR TOLL** - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in fall 2005, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**EMERGENCY TRIPS DURING NONSERVICE HOURS** - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

**BULK NEWSPAPERS** - Per 100 lbs. \$2.20

(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

**EXPRESS SHIPMENTS** - A flat handling charge of \$25.00 per parcel is charged.

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees.

Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled at \$5.00 per parcel.

**MEDICAL SUPPLIES** - A flat handling charge of \$5.00 per shipment is charged.

**DISCLAIMER** - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

[Statutory Authority: RCW 47.56.030, 47.60.326. 05-10-041, § 468-300-040, filed 4/28/05, effective 6/1/05; 03-08-072, § 468-300-040, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-040, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-040, filed 5/3/01, effective 6/3/01; 00-24-050, § 468-300-040, filed 11/30/00, effective 12/31/00; 99-08-066, § 468-300-040, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-040, filed 3/27/98, effective 4/27/98; 96-19-045 (Order 82), § 468-300-040, filed 9/12/96, effective 10/13/96; 94-18-014 (Order 77), § 468-300-040, filed 8/25/94, effective 9/25/94; 94-07-104 (Order 75), § 468-300-040, filed 3/18/94, effective 4/18/94; 93-18-005, § 468-300-040, filed 8/19/93, effective 9/19/93; 92-18-005, § 468-300-040, filed 8/20/92, effective 9/20/92; 91-18-022 (Order 72), § 468-300-040, filed 8/27/91, effective 9/27/91; 89-14-052 (Order 67, Resolution No. 354), § 468-300-040, filed 6/30/89; 89-04-014 (Order 66, Resolution No. 343), § 468-300-040, filed 1/23/89, effective 7/1/89; 87-12-005 (Order 61, Resolution No. 298), § 468-300-040, filed 5/21/87. Statutory Authority: RCW 47.60.290, 47.60.300 and 47.60.326. 86-24-009 (Order 59, Resolution No. 287), § 468-300-040, filed 11/21/86. Statutory Authority:

RCW 47.60.326. 86-06-010 (Order 54, Resolution No. 263), § 468-300-040, filed 2/21/86; 85-11-007 (Order 44, Resolution No. 241), § 468-300-040, filed 5/3/85; 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-040, filed 5/17/84; 83-07-062 (Order 33, Resolution No. 175), § 468-300-040, filed 3/22/83; 82-18-009 (Order 29, Resolution No. 153), § 468-300-040, filed 8/20/82; 82-07-063 (Order 28, Resolution No. 143), § 468-300-040, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. 81-15-099 (Order 23, Resolution No. 117), § 468-300-040, filed 7/22/81. Statutory Authority: RCW 47.60.325. 81-08-044 (Order 17, Resolution No. 104), § 468-300-040, filed 3/31/81; 80-04-104 (Order 15, Resolution No. 72), § 468-300-040, filed 4/1/80; 79-09-136 (Order 11, Resolution No. 57), § 468-300-040, filed 9/5/79; 79-04-047 (Order 6, Resolution No. 44), § 468-300-040, filed 3/27/79; 78-06-040 (Order 2, Resolution No. 21), § 468-300-040, filed 5/19/78.]

**WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.** Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, 2004, through June 30, 2005:

<b>Vessel Class</b>	<b>Deck Crew On Overtime</b>	<b>Deck Crew On Straight Time</b>
Jumbo Mark II	\$ 1,191.00	\$ 1,019.00
Jumbo	1,151.00	991.00
Super	1,102.00	949.00
Evergreen	822.00	695.00
Issaquah	871.00	743.00
Steel	687.00	586.00
Rhododendron	646.00	545.00
Hiyu	455.00	398.00
Passenger Only	521.78	445.57
Passenger Only	595.00	516.34
Fast Ferry		

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

[Statutory Authority: RCW 47.56.030, 47.60.326. 05-10-041, § 468-300-220, filed 4/28/05, effective 6/1/05; 03-08-072, § 468-300-220, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-220, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-220, filed 5/3/01, effective 6/3/01; 99-08-066, § 468-300-220, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-220, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 47.01.061, 47.56.032 and 1997 c 323. 97-15-110 (Order 83), § 468-300-220, filed 7/22/97, effective 8/22/97.]

# Title 478 WAC

## UNIVERSITY OF WASHINGTON

### Chapters

<b>478-04</b>	<b>Organization.</b>
<b>478-116</b>	<b>Parking and traffic rules of the University of Washington, Seattle.</b>
<b>478-118</b>	<b>Parking and traffic rules of the University of Washington, Tacoma.</b>
<b>478-136</b>	<b>Use of University of Washington facilities.</b>
<b>478-168</b>	<b>Regulations for the University of Washington libraries.</b>
<b>478-250</b>	<b>Governing indexing of public records.</b>

### Chapter 478-04 WAC ORGANIZATION

#### WAC

478-04-030 Meetings of the board of regents.

#### **WAC 478-04-030 Meetings of the board of regents.**

(1) Regular meetings. Regular meetings of the board shall be held pursuant to a schedule and at locations established yearly by resolution of the board. The president of the board, with the concurrence of a majority of the members of the board, may cancel any regular meeting. All such regular meetings will be conducted in conformance with the laws of the state of Washington governing such meetings.

The board shall give no less than twenty-four hours notice of cancellation of a regular meeting.

(2) Special meeting. The president of the university, the president of the board, or any six members of the board may call a special meeting at any time. Not less than twenty-four hours before any special meeting, the secretary shall have notified each member of the board by written notice of the time, place, and the business to be transacted at the meeting. Such notice shall be distributed and posted in accordance with the laws of the state governing such meetings. The presence of a regent at the meeting or the regent's written waiver of notice filed with the secretary shall constitute a waiver of receiving written notice of the meeting. When the meeting is called to deal with an emergency involving injury or damage, or the likelihood of injury or damage, to persons or property, and the time requirements for notice provided for above would be impractical and increase the likelihood of such injury or damage, such required notice may be dispensed with and the secretary shall notify each member of the board by the best means possible under the circumstances.

(3) Notice of agenda for regular meeting. Not less than four days before any regular meeting, the secretary shall mail to each member of the board a reminder of the regular meeting and a preliminary agenda setting forth the matters which are to be considered at the meeting.

(4) Addenda to the agenda at regular or special meetings. Addenda to the agenda of either a regular or a special meeting may be permitted at the commencement of or during such meeting, except that final disposition shall not be taken on

addenda to the agenda of a special meeting unless notice as required by applicable law has been given.

(5) Quorum. A majority of the entire board shall be necessary to constitute a quorum at all regular meetings and special meetings.

(6) Order of business. The following shall be the order of business at each regular meeting of the board:

- Report of the president of the board;
- Report of the president of the university;
- Consent agenda (including approval of minutes);
- Reports of standing committees of the board;
- Reports of special committees of the board; and
- Any other business that may properly come before the board.

The following shall be the order of business at each special meeting of the board:

- Reading of notice of meeting;
- The special business for which the meeting was called; and

Any other business that may properly come before the board.

The order of business of the board may be changed or suspended at any meeting by a majority of the regents present. An item shall be removed from the consent agenda by request of any regent.

(7) Minutes. The minutes of all regular and special meetings of the board shall be kept by the secretary. Such minutes, following approval, shall be open to public inspection in the office of the secretary of the board of regents during regular university business hours.

(8) Public meetings. Regular and special meetings of the board of regents and committees thereof as required by applicable law shall be open to the public, except for executive sessions which may be held as permitted by applicable law. Board members may appear at any meeting through a telephone or video-conferencing device that permits communications with all other persons at the meeting. Persons wishing to appear before the board to make a presentation shall comply with the procedures as specified in subsection (11) of this section.

(9) Committee of the whole meetings. Meetings of the board as a committee of the whole may be held before regular or special meetings of the board or at such time and such place as the president of the board may direct from time to time.

(10) Executive sessions. During any regular or special meeting of the board or committee, the board or committee may hold an executive session to discuss matters as permitted in applicable laws of the state of Washington.

(11) Communications to and appearance before the board. Any persons who wish to communicate to the board or appear before the board shall do so as follows:

(a) Communications to the board. Any person who wishes to bring a matter to the attention of the board may do so by submitting such communication in writing to the secretary of the board of regents. The secretary shall bring such written communications to the attention of the president of the board and the president of the university for direction as to response and/or transmittal to the board.

(b) Appearance before the board. The meetings of the board of regents are intended for presentation of agenda items

by the chairs of the respective standing committees and by the president of the university for discussion and action by the members of the board. Public testimony on agenda items, or on other relevant items which any person may wish to call to the attention of the board, may be taken by the appropriate standing committee or by the committee of the whole. The chair of each committee shall have the discretion to limit the time and order of appearances as deemed desirable for a fair presentation of views consistent with the other business before the committee. In an unusual case, this subsection may be waived by the president of the board or by any other six members of the board.

(c) Petition to board for promulgation, amendment, or repeal of rule. Persons having an interest in the promulgation, amendment, or repeal of a "rule" as defined in RCW 34.05.-010 may submit a written petition to the university's rules coordination office. Any petition so submitted shall contain the name and address of the petitioner or petitioners, a description of the persons on whose behalf the petition is presented if it is presented in a representative capacity, a statement of the interest of the petitioner and/or the persons on whose behalf it is presented, and a statement of the reasons supporting the petition. If the petition is for the promulgation of a rule, it shall contain the proposed rule. If the petition is for an amendment of an existing rule, it shall contain the rule with the proposed deletions lined out and proposed additions underlined or italicized. If the petition is for the repeal of a rule, it shall contain a copy of the rule proposed to be repealed. The petition shall be considered by the board at the first regular meeting held not less than thirty days after the date the petition was submitted to the rules coordination office, provided that the board may consider the petition at any earlier regular or special meeting of the board.

Within sixty days after submission of a petition to the rules coordination office that is for the promulgation, amendment, or repeal of a "rule," as defined in RCW 34.05.010, the board shall either deny the petition in writing or initiate rule-making procedures in accordance with RCW 34.05.330.

(12) Rules of procedure. *Robert's Rules of Order*, latest revised edition, shall govern all meetings of the board and its committees except where such rules of order are superseded by the bylaws of the board of regents or standing orders of the board. Any member of the board may make a motion which need not be seconded in order to bring the subject of the motion before the board for action.

[Statutory Authority: RCW 28B.20.130, 34.05.330 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-04-030, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW 28B.20.130 and 34.05.330. 05-08-064, § 478-04-030, filed 3/31/05, effective 5/1/05. Statutory Authority: RCW 28B.20.130, 34.05.330 and chapter 42.30 RCW. 03-24-046, § 478-04-030, filed 11/26/03, effective 12/27/03. Statutory Authority: RCW 28B.20.130 and 42.30.075. 92-02-038, § 478-04-030, filed 12/24/91, effective 1/24/92.]

## Chapter 478-116 WAC

### PARKING AND TRAFFIC RULES OF THE UNIVERSITY OF WASHINGTON, SEATTLE

#### WAC

478-116-145	Night and swing permits.
478-116-161	Parking fee payment.
478-116-311	Motor vehicle fines and penalties.
478-116-431	Notice and redemption of impounded vehicles.

**WAC 478-116-145 Night and swing permits.** (1) Night and swing permits allow for parking within the period of time printed on the permit. Parking on Saturday is allowed in unrestricted areas unless otherwise reserved for event parking as authorized by parking services.

(2) Gate-issued or machine-issued night permits are valid only until 7:30 a.m. of the following day.

(3) Night permit holders who purchase gatehouse parking weekdays between 2:30 p.m. and 4:00 p.m., will be charged the night extension rate.

[Statutory Authority: RCW 28B.20.130 and 28B.10.560. 05-08-064, § 478-116-145, filed 3/31/05, effective 5/1/05; 04-13-086, § 478-116-145, filed 6/17/04, effective 8/16/04; 01-20-030, § 478-116-145, filed 9/26/01, effective 10/27/01; 97-14-005, § 478-116-145, filed 6/19/97, effective 9/15/97.]

**WAC 478-116-161 Parking fee payment.** Regardless of payment method used, payment for a parking permit is the sole responsibility of the permit holder and failure to pay the parking permit fee is grounds for recall under WAC 478-116-184 (1)(d). The permit holder remains responsible for payment of parking fees until the permit is returned or expires. Payment for a parking permit may be made in one of the following ways:

(1) By cash, by Husky Card debit account, and by check or money order payable to the University of Washington. In the case of payment by Husky Card debit account, any previously uncollected fees will be charged to Husky Card accounts when sufficient balances become available.

(2) Permanent faculty and staff members regularly receiving University of Washington semimonthly paychecks may pay for a permit by payroll deduction.

(a) Deductions will be taken from the semimonthly paycheck for the current period and for all previous parking periods not yet collected. Persons selecting this plan must complete a payroll deduction authorization form online or in person in addition to the appropriate parking permit application.

(b) Deductions are terminated by completing a payroll deduction termination form and returning any unexpired permit.

[Statutory Authority: RCW 28B.20.130 and 28B.10.560. 05-08-064, § 478-116-161, filed 3/31/05, effective 5/1/05; 04-13-086, § 478-116-161, filed 6/17/04, effective 8/16/04; 97-14-005, § 478-116-161, filed 6/19/97, effective 9/15/97.]

### WAC 478-116-311 Motor vehicle fines and penalties.

The following schedule of fines for violation of the rules listed below is hereby established:

OFFENSE	MAXIMUM FINE
01 Obstructing traffic or pedestrian movements . . . . .	\$ 35.00
WAC 478-116-245	
02 Enter/exit without paying . . . . .	25.00
WAC 478-116-251	
03 Failure to lock ignition and/or set brakes . . .	15.00
WAC 478-116-281	
04 Improper display of vehicle permit. . . . .	12.00
WAC 478-116-223	
05 Permit not registered to this vehicle . . . . .	5.00
WAC 478-116-227	
06 Occupying more than one stall or space . . .	20.00
WAC 478-116-271	

OFFENSE	MAXIMUM FINE
07 Parking in restricted parking area . . . . .	35.00
WAC 478-116-251	
08 Parking in prohibited area . . . . .	35.00
WAC 478-116-253	
09 Parking on planted areas . . . . .	25.00
WAC 478-116-261	
10 Parking out of assigned area . . . . .	15.00
WAC 478-116-261	
11 Parking over posted time limit . . . . .	30.00
WAC 478-116-251	
12 Parking with no valid permit displayed . . . .	30.00
WAC 478-116-201	
13 Parking at expired meter . . . . .	30.00
WAC 478-116-211	
14 Parking outside cycle area . . . . .	10.00
WAC 478-116-221	
15 Parking in space/area not designated for parking . . . . .	25.00
WAC 478-116-261	
16 Parking while privilege suspended . . . . .	100.00
WAC 478-116-184	
17 Use of forged/stolen vehicle permit . . . . .	250.00
WAC 478-116-184 and 478-116-227	
18 Use of revoked permit . . . . .	100.00
WAC 478-116-231	
19 Unauthorized overnight parking of a motor home . . . . .	50.00
WAC 478-116-125	
20 Impoundment . . . . .	At cost
WAC 478-116-291	
21 Other violations of the university parking and traffic rules . . . . .	25.00
22 Parking in space designated for disability or wheelchair . . . . .	250.00
WAC 478-116-255	
23 Penalty for failure to pay fine, respond, or comply with final decision of citation hearing office within time limits . . . . .	25.00
WAC 478-116-520	

[Statutory Authority: RCW 28B.20.130 and 28B.10.560. 05-08-064, § 478-116-311, filed 3/31/05, effective 5/1/05; 04-13-086, § 478-116-311, filed 6/17/04, effective 8/16/04; 01-20-030, § 478-116-311, filed 9/26/01, effective 10/27/01; 97-14-005, § 478-116-311, filed 6/19/97, effective 9/15/97.]

**WAC 478-116-431 Notice and redemption of impounded vehicles.** (1) Not more than one business day after impoundment of any vehicle, the University of Washington police department shall mail a notice to the registered owner of the vehicle, as may be disclosed by the vehicle license number, if such be obtainable, and to any other person who claims the right to possession of the vehicle, if such a claim is known to an officer, agent or employee of the University of Washington police department who has knowledge of the impoundment. The notice shall be mailed to the registered owner at the address provided by the Washington state department of licensing or the corresponding agency of any other state or province. If a police officer who has knowledge of the impoundment has reason to believe that an owner, or one who claims to be an owner, is residing or in custody at some different address which is known to the officer, a copy of the notice shall be mailed or personally delivered to such owner or claimant in a manner designed, as nearly as may be

practicable, to give actual notice to the owner. The notice shall contain the full particulars of the impoundment, redemption, and an opportunity to contest the propriety of the impoundment as provided in WAC 478-116-541.

Similar notice shall be given to each person who seeks to redeem an impounded vehicle. If a vehicle is redeemed prior to the mailing of notice, the notice need not be mailed.

(2) Motor vehicles impounded shall be redeemed only under the following circumstances:

(a) Only the registered owner who has a valid driver's license or person authorized by the registered owner who has a valid driver's license and who produces proof of authorization and signs a receipt for it, may redeem an impounded motor vehicle.

(b) Any person so redeeming a motor vehicle impounded shall pay the cost of such impoundment (towing and storage), together with such fines as are outstanding against the vehicle if impoundment was made pursuant to WAC 478-116-401 prior to redemption, except as provided in (c) of this subsection.

(c) Any person seeking to redeem a motor vehicle impounded under WAC 478-116-401, 478-116-411 or 478-116-421 has a right to contest the validity of impoundment or the amount of towing and storage charges and shall have the motor vehicle released upon requesting a review as provided in WAC 478-116-541, and paying any outstanding fines, towing and storage charges.

(3) In addition to any other penalty which may be imposed as a result of actions described in subsection (2)(c) of this section, campus parking privileges shall be suspended until all such debts are paid.

[Statutory Authority: RCW 28B.20.130 and 28B.10.560. 05-08-064, § 478-116-431, filed 3/31/05, effective 5/1/05; 04-13-086, § 478-116-431, filed 6/17/04, effective 8/16/04; 97-14-005, § 478-116-431, filed 6/19/97, effective 9/15/97.]

## Chapter 478-118 WAC

### PARKING AND TRAFFIC RULES OF THE UNIVERSITY OF WASHINGTON, TACOMA

#### WAC

478-118-010	Objectives of parking and traffic rules.
478-118-020	Definitions.
478-118-045	Liability of the university.
478-118-050	Permits required for vehicles on campus.
478-118-055	Visitor parking.
478-118-060	Carpool and disability parking permits.
478-118-080	Transfer of permits limited.
478-118-100	Display of permits.
478-118-200	Parking fees.
478-118-210	Allocation of parking spaces.
478-118-270	Motorcycles and scooters.
478-118-290	Bicycle parking and traffic rules.
478-118-300	Skateboard rules.
478-118-400	Issuance of traffic and parking citations.
478-118-410	Fines and impounding.
478-118-420	Appeals of fines and impoundments.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

478-118-510	Liability of the university. [Statutory Authority: RCW 28B.10.560 and 28B.20.130. 02-15-174, § 478-118-510, filed 7/24/02, effective 8/24/02.] Repealed by 05-08-017, filed 3/28/05, effective 4/28/05. Statutory Authority: RCW 28B.10.560 and 28B.20.130.
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**WAC 478-118-010 Objectives of parking and traffic rules.** The objectives of these rules are:

- (1) To protect and control pedestrian and vehicular traffic on the campus of the University of Washington, Tacoma;
- (2) To assure access at all times for emergency vehicles and equipment;
- (3) To minimize traffic disturbances;
- (4) To facilitate the operation of the university by assuring access to its vehicles;
- (5) To allocate limited parking space for the most efficient use;
- (6) To protect state property; and
- (7) To encourage travel to the campus by means other than a single occupancy vehicle (SOV).

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-010, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-010, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-020 Definitions.** The following definitions apply to this chapter:

- (1) Bicycle: Any device defined as a bicycle in chapter 46.04 RCW.
- (2) Campus: The campus of University of Washington, Tacoma.
- (3) Employee: An employee of the university.
- (4) Fee: A charge for the use of the permit issued.
- (5) Hours of operation: The hours of operation established by the university for a particular parking area, parking lot, or parking space.
- (6) Impoundment: The removal of a vehicle to a storage area by either a public safety officer or agent of the university.
- (7) Motorcycles and scooters: A motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar. For the purposes of these rules, motorcycles, motorized bicycles, and motorized scooters are considered to be motor vehicles and are subject to all traffic and parking rules controlling motor vehicles.
- (8) Nonmotor/nonmotorized vehicle: A device other than a motor vehicle used to transport persons. Nonmotorized vehicles include, but are not limited to, bicycles, skateboards, rollerblades and rollerskates.
- (9) Operator or driver: Every person who drives or is in actual physical control of a motor vehicle or a nonmotorized vehicle.
- (10) Parking space: A space for parking one motor vehicle designated by: Lines painted on either side of the space, at the rear of the space, a wheelstop positioned in front of the space, a sign or signs, or other markings.
- (11) Public safety officers: Employees of the university who are responsible for campus security, safety, and parking and traffic control.
- (12) Registered owner: The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.
- (13) Rollerskate/rollerblade: A device used to attach wheels to the foot or feet of a person.

(14) Skateboard: Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

(15) Student: A person enrolled in the university.

(16) Traffic: Motorized and nonmotorized modes of transportation defined in chapter 46.04 RCW.

(17) University: The University of Washington, Tacoma, and collectively those responsible for its control and operations.

(18) Vehicle: Any motorized vehicle or nonmotorized vehicle.

(19) Visitor: A person who is neither an employee nor a student of the university.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-020, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-020, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-045 Liability of the university.** Except for vehicles that the university owns or operates, the university assumes no liability under any circumstances for vehicles on the campus.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-045, filed 3/28/05, effective 4/28/05.]

**WAC 478-118-050 Permits required for vehicles on campus.** Except as provided in WAC 478-118-055, no person shall park or leave any vehicle (other than bicycles), whether attended or unattended, upon the campus unless the person first purchases a permit from the university or from the operator of the parking lot in which the vehicle is parked. Permission to park on campus will be shown by display of a valid permit, or (if a parking lot does not issue permits) by payment of the fee for parking.

(1) A valid permit is:

(a) A current vehicle permit displayed in accordance with WAC 478-118-100. Vehicle permits are valid until revoked;

(b) A temporary permit authorized by the university and displayed in accordance with instructions. Temporary permits are valid through the date or time on the permit;

(c) A parking permit issued by a gate attendant and displayed on the vehicle in accordance with instructions; or

(d) A parking permit dispensed by machine at the campus and displayed in accordance with instructions.

(2) Parking permits are not transferable, except as provided in WAC 478-118-060 and 478-118-080.

(3) The university reserves the right to refuse to issue parking permits.

(4) This section does not apply to vehicles that the university owns or operates.

(5) The university may allow persons without permits to drive through the campus without parking.

(6) A public safety officer may require visitors to wait at the entrances to the campus when pedestrian or vehicular traffic congestion is above normal.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-050, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-050, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-055 Visitor parking.** (1) No permit shall be required for the following motor vehicles:

(a) Public safety and emergency vehicles while performing services;

(b) Marked taxis, tow trucks, commercial delivery; and media vehicles which have agreed to comply with university guidelines and received prior written approval of the university; and

(c) School buses and tour buses parking in spaces designated by the university.

(2) University departments may pay for all or part of the parking fees for their official visitors and guests based on the established fee schedule.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-055, filed 3/28/05, effective 4/28/05.]

**WAC 478-118-060 Carpool and disability parking permits.** (1) Carpool permits may be issued to employees and students. One transferable permit will be issued by the university for each carpool. This permit is transferable only among the registered members of the carpool. This permit must be displayed in accordance with the instructions provided with the permit. A carpool is a group of two or more employees or students who commute to the campus in the same vehicle.

(2) The university provides parking for the disabled in accordance with the requirements of federal and state law.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-060, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-060, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-080 Transfer of permits limited.** (1) Permit holders may transfer one valid permit between motor vehicles. Improper transfer of a permit shall include, but is not limited to, the wrongful sale, lending, or bad faith transfer of a parking permit.

(2) Permits displaying license plate numbers shall be valid only in the vehicles whose license number matches the number written on the permit.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-080, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-080, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-100 Display of permits.** (1) Parking permits, other than hourly permits (receipts) dispensed from parking machines and motorcycle and scooter permits, shall be displayed either by hanging from the rear view mirror or by placing face-up on the driver's side dashboard and shall be fully visible from the exterior of the motor vehicle.

(2) Hourly permits dispensed from parking machines are not required to be displayed on or in the vehicle.

(3) When applicable, the area designator (numeral, letter, or combination) shall be affixed to the vehicle permit and shall be fully visible from the exterior of the motor vehicle.

(4) Motorcycle and scooter license numbers shall be registered with the university. Motorcycle and scooter permits need not be displayed.

(5) When required to be displayed, permits not fully visible from the exterior of a motor vehicle are not valid and are subject to citation for no valid permit displayed.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-100, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-100, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-200 Parking fees.** The regents of the University of Washington shall adopt parking fees, specifying the charge per hour, day, quarter, or year.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-200, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-200, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-210 Allocation of parking spaces.** The parking spaces available on campus shall be allocated in a manner that will best attain the objectives of these rules.

During special occasions causing additional or heavy traffic and during emergencies, the university may impose additional traffic and parking policies to achieve the specified objectives of this chapter.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-210, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-210, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-270 Motorcycles and scooters.** (1) Motorcycles and scooters are subject to all traffic rules controlling other motor vehicles.

(2) Motorcycles and scooters may only be parked in areas designated for motorcycles.

(3) Motorcycles and scooters are not permitted on paths, sidewalks, or authorized bicycle or pedestrian areas, or in buildings at any time.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-270, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-270, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-290 Bicycle parking and traffic rules.** (1) The primary aim of the bicycle control program is safety. This aim will be achieved by keeping bicycles out of buildings, away from building exits, and parking them off paths and sidewalks.

(2) Bicycles may be ridden any place where vehicles are permitted. They may be ridden on most sidewalks, though pedestrians always have the right of way. It shall be a violation of this section for any bicycle rider to fail to yield to pedestrians, or to ride a bicycle on paths, sidewalks, or streets where signs indicate such is prohibited. An audible signal or warning must be given by the bicyclist whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the bicycle.

(3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

(4) Bicycles shall be operated in a safe manner at all times on paths, sidewalks, and roadways. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

(5) Bicycles shall be parked only in bicycle racks. All bicycle owners are encouraged to secure their bicycles with a secure lock. At no time shall a bicycle be parked in a building, except where bicycle storage rooms are provided, near a building exit, on a path or sidewalk, in planted areas nor chained or otherwise secured to trees, lamp standards, railings, or sign posts.

(6) Moving a bicycle into any unauthorized area such as a building or construction zone is prohibited.

(7) Bicycle racks in campus areas are for parking and shall not be used for overnight storage.

(8) Impoundment for illegal parking.

(a) Bicycles parked in violation of subsections (5), (6), and (7) of this section will be subject to seizure and impoundment by the university.

(b) A bicycle abandoned or parked on university land for fourteen consecutive days or longer is presumed abandoned and is subject to seizure and impoundment by the university. A bicycle will not be considered abandoned when the owner/operator is unable to remove it and so notifies the campus safety and security office. A bicycle that has been obviously stripped or vandalized may be immediately impounded.

(c) Impounded bicycles will be stored by the campus safety and security office. Bicycles will be released at specified times and upon presentation of proof of ownership and payment of any fine that has been imposed. Owners of impounded bicycles, if identifiable, will be notified as soon as reasonably possible after impoundment and must reclaim their bicycle within fifteen consecutive days. Bicycles unclaimed after sixty consecutive days will be subject to disposal, including sale at public auction, in accordance with university property disposal rules.

(d) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impoundment, storage, or sale of any item under this section.

(e) Impoundment or sale of any bicycle under this section shall not substitute for, nor release any person from liability for, damage to persons or property caused by the use of a bicycle.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-290, filed 3/28/05, effective 4/28/05.]

**WAC 478-118-300 Skateboard rules.** (1) Skateboard use in pedestrian areas including, but not limited to, walkways, ramps, concourses, plazas, and staircases, and on internal university streets and loading areas on the campus is restricted solely to transporting an individual from one campus destination to another. Any recreational, athletic, or other exhibitional use of skateboards unrelated to transportation is strictly prohibited, unless expressly approved in advance by the committee on the use of university facilities, pursuant to chapter 478-136 WAC and use of university facilities policies and procedures.

(2) Skateboard use in violation of this section shall result in the following:

(a) For the first offense, the campus safety and security office will record the name of the individual and provide a written warning against further skateboard use in violation of this section. Individuals who cannot produce satisfactory identification will be given a receipt for their skateboard, which will be impounded by the campus safety and security office until they are able to return with the receipt and identification. There will be no impoundment fee.

(b) For a second offense, within twenty-four months of any previous offense or warning, the skateboard will be

impounded for not less than forty-eight hours and the offender shall be subject to a fine and/or impoundment fee.

(c) For a third or subsequent offense, within twenty-four months of any previous two offenses, warnings, or combination thereof, the skateboard will be impounded for not less than thirty days and the offender shall be subject to a fine and impoundment fee.

(d) Impounded skateboards will be held by the campus safety and security office and released only during regular business hours to individuals with satisfactory identification.

(3) Skateboards impounded under this section which are unclaimed sixty consecutive days after the applicable minimum impoundment time period has elapsed will be presumed abandoned and be subject to disposal, including sale at public auction, in accordance with university property disposal rules.

(4) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

(5) Impoundment or sale of any skateboard under this section shall not substitute for, nor release any person from liability for, damage to persons or property caused by use of a skateboard at the university.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-300, filed 3/28/05, effective 4/28/05.]

**WAC 478-118-400 Issuance of traffic and parking citations.** Upon probable cause to believe that a violation of these rules has occurred, a public safety officer or designated contractor may issue a citation setting forth the date, the approximate time, the locality, the nature of the violation, the permit number, license number, infraction, officer, and the amount of fine(s). The citation shall be served on the person responsible for the violation by: Attaching a copy of the citation to, or placing it prominently within, the vehicle allegedly involved in the violation; mailing a copy of the citation to the person responsible; or serving a copy of the citation personally on the person responsible.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-400, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-400, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-410 Fines and impounding.** (1) The current schedule of fines shall be published by the university and made available for review in the safety and security office.

(2) All fines must be paid as designated on the citation within twenty calendar days from the date of the citation. Fines must be delivered in person to the university's cashier office or postmarked on or before the due date specified in these rules to avoid additional penalties. If any citation has neither been paid nor appealed after twenty calendar days from the date of the citation, the university shall impose an additional fine of ten dollars per offense and may:

(a) Withhold the violator's degrees, transcripts, grades, refunds, or credits until all fines are paid;

(b) Delay registration for the following quarter;

(c) Impound the violator's vehicle;

(d) Deny future parking privileges to the violator; or



(e) Refuse to issue keys to a violator who is an employee or student.

(3) In addition to imposing fines, public safety officers may impound or immobilize any vehicle parked on campus in violation of these rules. The expenses of impounding, immobilization, and storage shall be charged to the owner or operator, or both, of the vehicle and must be paid before the vehicle's release. Grounds for impounding vehicles shall include, but not be limited to, the following:

- (a) Blocking a roadway so as to impede the flow of traffic;
- (b) Blocking a walkway so as to impede the flow of pedestrian traffic;
- (c) Blocking a fire hydrant or fire lane;
- (d) Creating a safety hazard;
- (e) Blocking another legally parked vehicle;
- (f) Parking in a marked "tow-away" zone;
- (g) Leaving a vehicle unattended on campus for longer than two days;
- (h) Failing to pay a fine imposed under this chapter; or
- (i) Parking a nonuniversity vehicle in a spot reserved for university use.

Not more than twenty-four hours after impoundment of any vehicle (excluding bicycles and skateboards), the university shall mail a notice to the registered owner of the vehicle and to any other person who claims the right to possession of the vehicle, if those persons can be identified. The university shall not be liable for loss or damage of any kind resulting from impounding, immobilization, or storage. Impounding a vehicle does not remove the obligation for any fines associated with the violation.

(4) An accumulation of traffic violations by a student may be cause for discipline under the student conduct code of the university.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-410, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-410, filed 7/24/02, effective 8/24/02.]

**WAC 478-118-420 Appeals of fines and impoundments.** (1) Except for skateboards, any impoundment or fine under this chapter may be appealed in writing within twenty calendar days from the date of the citation or the notice of impoundment. The notice of appeal must be addressed to the location indicated on the citation or notice of impoundment. The university will make appeal forms available at the university's cashier office. The notice of appeal must explain the reasons for contesting the citation or impoundment. If the person who files a notice of appeal desires an opportunity to make an oral statement in the appeal, the request to make an oral statement must be included in the notice of appeal.

(2) The hearing on the appeal shall be a brief adjudicative hearing as provided by RCW 34.05.482 et seq. If a request for an oral statement was made, the presiding officer or officers shall provide reasonable notice of the time and place for receiving the oral statement. The presiding officer (s) shall review the notice of appeal and provide a written decision to the person submitting the appeal within ten days of taking action. If the appeal is denied or modified to a warning, dismissal, reduction, or suspension, the decision shall include a brief statement of its reasons and information about the opportunity for further review. Any fine owed on a writ-

ten decision that is not further appealed as provided in subsection (3) of this section shall be paid within twenty-one days after service of the decision.

(3) A person wishing to contest the written decision may request a review by contacting the designated university reviewing officer in writing within twenty-one days after service of the decision. The request for review shall explain why the decision was incorrect. The reviewing officer shall, within twenty days of the date of the request, review the matter and render a final written decision to uphold or modify (warning, dismissal, reduction, or suspension), which shall include a brief statement of its reasons and information about the opportunity to appeal the decision to the district court. Any final decision of the reviewing officer not appealed as provided in subsection (4) of this section shall be paid within ten days after service of the decision.

(4) A person wishing to appeal a final decision of the reviewing officer to the district court may, within ten days of service of the final decision, file a written notice with the university's finance office. The written notice must be submitted on the "Notice of Appeal" form provided by the university. Documents relating to the appeal shall immediately be forwarded to the district court, which shall have jurisdiction to hear the appeal de novo. No appeal to the district court may be taken unless the citation has been contested as provided in subsections (2) and (3) of this section.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. 05-08-017, § 478-118-420, filed 3/28/05, effective 4/28/05; 02-15-174, § 478-118-420, filed 7/24/02, effective 8/24/02.]

## Chapter 478-136 WAC USE OF UNIVERSITY OF WASHINGTON FACILITIES

### WAC

478-136-015	Administrative responsibilities.
478-136-030	Limitations on use.

### WAC 478-136-015 Administrative responsibilities.

(1) The board of regents has delegated to the president of the university the authority to regulate the use of university facilities.

(2) Under this authority, the president has appointed the committee on the use of university facilities: To provide for proper review of the use of university facilities; to establish within the framework of this policy guidelines and procedures governing such use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate. Inquiries concerning the use of university facilities may be directed to:

University of Washington  
Secretary of the Committee on the  
Use of University Facilities  
239M Gerberding Hall  
Box 351241  
Seattle, WA 98195-1241  
(or phone: 206-543-9233).

(3) Preliminary approval of an event by an academic or administrative unit of the university implies that a responsible official has applied his or her professional judgment to the

content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded that the event is consistent with the teaching, research, and/or public service mission of the university.

(4) Final approval of a facilities use request by the committee on the use of university facilities implies that the committee has reviewed the proposed event with regard to: The general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods and the general public.

(5) The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(6) The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(7) Individuals who violate the university's use of facilities regulations and approved users who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities. Failure to comply with a request to leave university property could subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.

[Statutory Authority: RCW 28B.20.130 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-136-015, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW 28B.20.130. 02-06-020, § 478-136-015, filed 2/25/02, effective 3/28/02; 97-24-047, § 478-136-015, filed 11/26/97, effective 12/27/97; 86-15-038 (Order 86-2), § 478-136-015, filed 7/16/86. Statutory Authority: RCW 28B.20.130(1). 82-16-001 (Order 82-2), § 478-136-015, filed 7/22/82, effective 10/1/82.]

**WAC 478-136-030 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would sig-

nificantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington  
Secretary to the Committee on the  
Use of University Facilities  
239M Gerberding Hall  
Box 351241  
Seattle, WA 98195-1241

(or phone: 206-543-9233), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary

action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Smoking is prohibited in the seating areas of all athletic stadia. Smoking is permitted on pedestrian concourses.

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

(12) The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:

(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student

housing in accordance with smoking regulations established for those facilities by the vice-president for student affairs.

(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.

(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.

(13) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) or (g) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) or (g) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) or (g) of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopen containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration.

(Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such license shall accompany the license application filed with the Washington state liquor control board.

(g) Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the vice-president for student affairs prior to applying for the permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, office of the vice-president for student affairs, sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor control board.

(h) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

[Statutory Authority: RCW 28B.20.130 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-136-030, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW 28B.20.130. 03-24-045, § 478-136-030, filed 11/26/03, effective 12/27/03; 02-06-020, § 478-136-030, filed 2/25/02, effective 3/28/02; 01-11-135, § 478-136-030, filed 5/23/01, effective 6/23/01; 97-24-047, § 478-136-030, filed 11/26/97, effective 12/27/97; 91-14-024, § 478-136-030, filed 6/25/91, effective 7/26/91. Statutory Authority: Chapter 34.05 RCW. 90-12-034, § 478-136-030, filed 5/30/90, effective 9/1/90. Statutory Authority: RCW 28B.20.130. 88-19-045 (Order 88-05), § 478-136-030, filed 9/14/88; 85-01-045 (Order 84-5), § 478-136-030, filed 12/14/84. Statutory Authority: RCW 28B.20.130(1). 82-16-001 (Order 82-2), § 478-136-030, filed 7/22/82, effective 10/1/82; Order 73-2, § 478-136-030, filed 1/10/73.]

## Chapter 478-168 WAC REGULATIONS FOR THE UNIVERSITY OF WASHINGTON LIBRARIES

### WAC

478-168-035	University of Washington libraries and Marian Gould Gallagher Law Library—Service schedule.
478-168-180	Identification card—Conditions of use.
478-168-310	Fines and charges.
478-168-390	Failure to pay library charges and misuse of library privileges.

**WAC 478-168-035 University of Washington libraries and Marian Gould Gallagher Law Library—Service schedule.** (1) Business hours are based on the identifiable needs of the university community as a whole and in consideration of the staff made available to support public service activities of the libraries.

(2) All libraries may close on legal and university holidays. Such closures are posted at the respective library locations seven days in advance.

(3) Unscheduled closures may be declared by the dean of university libraries or his/her designee, for the University of Washington libraries. The director of the Marian Gould Gallagher Law Library or his/her designee will have responsibilities for determining unscheduled closures for the Marian Gould Gallagher Law Library. Unscheduled closures will be due to staffing or physical plant problems beyond the libraries' control which constitute a threat to life, limb, essential creature comforts or utility of the facilities by users and staff.

[Statutory Authority: RCW 28B.20.130 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-168-035, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW

28B.15.031 and 28B.20.130. 95-14-045, § 478-168-035, filed 6/28/95, effective 9/18/95.]

**WAC 478-168-180 Identification card—Conditions of use.** (1) Each borrower is responsible for obtaining an official identification card from the appropriate university office or a library borrower's card from the library cashier.

(2) An identification card is authorized for use only by the individual whose name appears on the card.

(3) Official identification must be presented for the completion of each in-person circulation transaction.

(4) Each borrower is responsible for materials checked out on his/her University of Washington identification card or library borrower's card. Library materials are not to be loaned to others except as designated in WAC 478-168-180(6).

(5) Campus borrowers are responsible for keeping the registrar or payroll office informed of changes of address. Off-campus borrowers are responsible for keeping the library cashier informed of changes of address.

(6) Each University of Washington faculty, academic personnel, administrative personnel, professional staff, visiting scholar, and other individuals as authorized by the dean of university libraries, may designate up to two proxies or couriers for the purpose of picking up materials for his/her use.

[Statutory Authority: RCW 28B.20.130 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-168-180, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW 28B.20.130. 04-13-087, § 478-168-180, filed 6/17/04, effective 9/21/04. Statutory Authority: RCW 28B.15.031 and 28B.20.130. 95-14-045, § 478-168-180, filed 6/28/95, effective 9/18/95. Statutory Authority: RCW 28B.20.130(1). 79-10-016 (Order 79-4), § 478-168-180, filed 9/7/79; Order 73-1, § 478-168-180, filed 1/8/73.]

**WAC 478-168-310 Fines and charges.** (1) All borrowers are subject to a uniform system of fines and charges for late return of library material and for replacement costs when required. The dean of university libraries or his/her designee will set the schedule of fines and charges on a regular basis.

(2) The approved schedule of fines and charges will be available online and in the *Libraries Operations Manual*.

(3) Fines are monetary sanctions for the late return of material. Fines are levied only when an overdue item is returned prior to billing.

(4) Billing charges are levied to defray the costs incurred by the libraries in billing, processing sanctions, and other activities related to the recovery of material that is substantially overdue.

(5) Replacement charges are levied to pay for the replacement of substantially overdue material. The replacement charges include the cost of the material and the cost of processing the material for the shelves. All library materials, regardless of fines and fees paid, remain state property.

(6) Binding, mending and damage charges are levied to repair material, to prepare replacement materials for circulation or to compensate for the decreased value of materials due to irreparable damage.

[Statutory Authority: RCW 28B.20.130, 28B.15.031 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-168-310, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW 28B.20.130. 04-13-087, § 478-168-310, filed 6/17/04, effective 9/21/04. Statutory Authority: RCW 28B.15.031 and 28B.20.130. 95-14-

045, § 478-168-310, filed 6/28/95, effective 9/18/95. Statutory Authority: RCW 28B.20.130(1). 79-10-016 (Order 79-4), § 478-168-310, filed 9/7/79; Order 73-1, § 478-168-310, filed 1/8/73.]

**WAC 478-168-390 Failure to pay library charges and misuse of library privileges.** (1) Failure to pay library charges and/or return library material may result in:

(a) Holds being placed on student records.

(b) Cancellation or blocking of registration for students.

(c) Collection processing by the libraries and/or campus agencies designated by the University of Washington. Such accounts may also be reported to credit bureaus and/or litigation instituted.

(d) Revocation of borrowing privileges.

(e) Civil or criminal action against the borrower.

(f) Any combination thereof.

(2) Misuse of library privileges may result in revocation of borrowing privileges by the dean of university libraries or his/her designee.

[Statutory Authority: RCW 28B.20.130, 28B.15.031 and University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2. 05-21-133, § 478-168-390, filed 10/19/05, effective 11/19/05. Statutory Authority: RCW 28B.20.130. 04-13-087, § 478-168-390, filed 6/17/04, effective 9/21/04. Statutory Authority: RCW 28B.15.031 and 28B.20.130. 95-14-045, § 478-168-390, filed 6/28/95, effective 9/18/95. Statutory Authority: RCW 28B.20.130(1). 79-10-016 (Order 79-4), § 478-168-390, filed 9/7/79; Order 73-1, § 478-168-390, filed 1/8/73.]

## Chapter 478-250 WAC

### GOVERNING INDEXING OF PUBLIC RECORDS

#### WAC

478-250-050

University rules coordination.

478-250-060

Rule indexing.

**WAC 478-250-050 University rules coordination.** (1) Coordination of university rules shall be conducted by the rules coordination office, which reports to the office of the vice-provost.

(2) The director of the rules coordination office shall have knowledge of the subjects of rules being proposed or prepared within the university, maintain the records of any such action, and respond to public inquiries about possible, proposed, or existing rules and the identity of university personnel developing, reviewing, or commenting on them.

[Statutory Authority: RCW 28B.20.130 and chapter 34.05 RCW, RCW 42.17.260 and 42.17.290. 05-08-064, § 478-250-050, filed 3/31/05, effective 5/1/05. Statutory Authority: RCW 28B.20.130, 42.17.260, 42.17.290, 42.17.300 and chapter 34.05 RCW. 01-11-136, § 478-250-050, filed 5/23/01, effective 6/23/01; 97-14-004, § 478-250-050, filed 6/19/97, effective 7/20/97. Statutory Authority: RCW 28B.20.130. 91-10-031, § 478-250-050, filed 4/24/91, effective 5/25/91.]

**WAC 478-250-060 Rule indexing.** (1) Content. The university rules coordination office shall maintain an index of final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW 42.17.260(5), issued after June 30, 1990, by the board of regents of the University of Washington, the president of the University of Washington, or their designees.

(2) Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

[Statutory Authority: RCW 28B.20.130 and chapter 34.05 RCW, RCW 42.17.260 and 42.17.290. 05-08-064, § 478-250-060, filed 3/31/05, effective 5/1/05. Statutory Authority: RCW 28B.20.130, 42.17.260, 42.17.290, 42.17.300 and chapter 34.05 RCW. 97-14-004, § 478-250-060, filed 6/19/97, effective 7/20/97. Statutory Authority: RCW 28B.20.130. 91-10-031, § 478-250-060, filed 4/24/91, effective 5/25/91.]

## Title 479 WAC

# TRANSPORTATION IMPROVEMENT BOARD

(Formerly: Urban Arterial Board)

### Chapters

- 479-12**      **Submission of proposed urban arterial trust account projects to transportation improvement board.**
- 479-14**      **Submission of proposed transportation improvement account projects to transportation improvement board.**

### Chapter 479-12 WAC

## SUBMISSION OF PROPOSED URBAN ARTERIAL TRUST ACCOUNT PROJECTS TO TRANSPORTATION IMPROVEMENT BOARD

### WAC

- 479-12-150**      Matching ratios for arterial improvement program projects.

**WAC 479-12-150 Matching ratios for arterial improvement program projects.** Urban arterial trust account funds for local agency arterial projects shall be matched by an amount not less than twenty percent of the total cost of the project for cities with a valuation greater than \$2.5 billion and counties with road levy valuations greater than \$10 billion, an amount not less than fifteen percent of the total cost of the project for cities with valuations between \$2.5 billion and \$1.0 billion and counties with road levy valuations between \$10.0 billion and \$3.0 billion, and not less than ten percent of the total cost of the project for cities with a valuation of less than \$1.0 billion and counties with road levy valuation of less than \$3.0 billion. The board shall use the valuations as last determined by the department of revenue.

[Statutory Authority: Chapter 47.26 RCW. 05-05-004, § 479-12-150, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 47.26 and 47.66 RCW. 99-24-038, § 479-12-150, filed 11/23/99, effective 12/24/99.]

### Chapter 479-14 WAC

## SUBMISSION OF PROPOSED TRANSPORTATION IMPROVEMENT ACCOUNT PROJECTS TO TRANSPORTATION IMPROVEMENT BOARD

### WAC

- 479-14-180**      Local/private matching funds on transportation partnership program projects.

**WAC 479-14-180 Local/private matching funds on transportation partnership program projects.** Transporta-

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tion partnership program funds for urban program projects authorized by the board shall be matched by an amount not less than twenty percent of the total cost of the project for cities with a valuation greater than \$2.5 billion and counties with road levy valuations greater than \$10 billion, an amount not less than fifteen percent of the total cost of the project for cities with valuations between \$2.5 billion and \$1.0 billion and counties with road levy valuations between \$10.0 billion and \$3.0 billion, and not less than ten percent of the total cost of the project for cities with a valuation of less than \$1.0 billion and counties with road levy valuation of less than \$3.0 billion. The board shall use the valuations as last determined by the department of revenue. Matching funds will be considered to be all contributions other than those provided by the board.

[Statutory Authority: Chapter 47.26 RCW. 05-05-004, § 479-14-180, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 47.26 and 47.66 RCW. 99-24-038, § 479-14-180, filed 11/23/99, effective 12/24/99.]

## Title 480 WAC

# UTILITIES AND TRANSPORTATION COMMISSION

### Chapters

- 480-14**      **Motor carriers, excluding household goods carriers and common carrier brokers.**
- 480-15**      **Household goods carriers.**
- 480-30**      **Auto transportation companies.**
- 480-31**      **Private, nonprofit transportation providers.**
- 480-40**      **Passenger charter carriers.**
- 480-62**      **Railroad companies—Operations.**
- 480-70**      **Solid waste and/or refuse collection companies.**
- 480-73**      **Hazardous liquid pipeline companies.**
- 480-75**      **Hazardous liquid, gas, oil and petroleum pipeline companies—Safety.**
- 480-80**      **Utilities general—Tariffs, price lists, and contracts.**
- 480-90**      **Gas companies—Operations.**
- 480-92**      **Low-level radioactive waste.**
- 480-93**      **Gas companies—Safety.**
- 480-100**      **Electric companies.**
- 480-110**      **Water companies.**
- 480-120**      **Telephone companies.**
- 480-121**      **Registration, competitive classification and price lists of telecommunications companies.**
- 480-122**      **Washington telephone assistance program.**
- 480-140**      **Commission general—Budgets.**

**DISPOSITION OF CHAPTERS FORMERLY  
CODIFIED IN THIS TITLE**

**Chapter 480-146**

**COMMISSION GENERAL—SECURITIES, LIENS, REFUNDING  
OF NOTES, LEASE OF UTILITY FACILITIES**

480-146-240	Application of rules. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-240, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160.
480-146-250	Filing. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-250, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-207, 480-100-207, 480-110-457, 480-120-331.
480-146-260	Commission may require additional information. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-260, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-207, 480-100-207, 480-110-457, 480-120-331.
480-146-270	Applicant may include information by reference. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-270, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-207, 480-100-207, 480-110-457, 480-120-331.
480-146-280	Applicant duty when information is unavailable. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-280, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-207, 480-100-207, 480-110-457, 480-120-331.
480-146-290	Securities statements and applications. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-290, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-242, 480-100-242, 480-110-525, 480-120-365.
480-146-300	Filing requirements for securities statements and applications. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-300, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-242, 480-100-242, 480-110-525, 480-120-365.
480-146-310	Commission may set securities application or statement for public hearing. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-310, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160.
480-146-320	Minimum time required for commission order. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-320, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160.

480-146-330

160. Later promulgation, see WAC 480-90-242, 480-100-242, 480-110-525, 480-120-365.

480-146-340

Supplemental securities filings may be exempt from time limitations. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-330, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-242, 480-100-242, 480-110-525, 480-120-365.

480-146-350

Reporting of securities transactions. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-340, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. Later promulgation, see WAC 480-90-262, 480-100-565, 480-110-525, 480-120-389, 480-90-242, 480-100-242, 480-110-525, 480-120-365.

480-146-360

Filing of affiliated interest transactions. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-350, filed 4/1/99, effective 5/2/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

480-146-370

Reporting of affiliated interest transactions. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-360, filed 4/1/99, effective 5/2/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

480-146-380

Application for approval of lease of utility facilities. [Statutory Authority: RCW 80.01.040 and 80.04.160. 99-08-054 (Order R-460, Docket No. A-980085), § 480-146-370, filed 4/1/99, effective 5/2/99.] Repealed by 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160.

**Chapter 480-14 WAC**

**MOTOR CARRIERS, EXCLUDING HOUSEHOLD  
GOODS CARRIERS AND COMMON CARRIER  
BROKERS**

**WAC**

480-14-999

Adoption of reference.

**WAC 480-14-999 Adoption of reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), and WAC 480-14-390 (Hazardous materials regulations).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-14-040 (Definitions), WAC 480-14-070 (Federal regulations, 49 CFR, Part 390—General applicability and definitions), WAC 480-14-250 (Insurance requirements; cause for suspension or cancellation), WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), WAC 480-14-380 (Hours of service—On duty—Federal safety regulations), WAC 480-14-390 (Hazardous materials regulations), and WAC 480-14-400 (Transportation of radioactive materials—Driving and parking rules).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-14-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-14-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-14-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-14-999, filed 9/28/01, effective 10/29/01.]

## Chapter 480-15 WAC

### HOUSEHOLD GOODS CARRIERS

#### WAC

480-15-999

Adoption by reference.

**WAC 480-15-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-15-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-15-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-15-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-15-999, filed 9/28/01, effective 10/29/01.]

## Chapter 480-30 WAC

### AUTO TRANSPORTATION COMPANIES

#### WAC

480-30-999

Adoption by reference.

**WAC 480-30-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-30-097 (Equipment—Inspection—Ordered for repairs) and WAC 480-30-100 (Operation of motor vehicles).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-30-095 (Equipment—Safety) and WAC 480-30-100 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-30-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-30-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-30-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-30-999, filed 9/28/01, effective 10/29/01.]



**Chapter 480-31 WAC  
PRIVATE, NONPROFIT TRANSPORTATION  
PROVIDERS**

WAC  
480-31-999

Adoption by reference.

**WAC 480-31-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), WAC 480-31-130 (Operation of motor vehicles) and WAC 480-31-140 (Safety inspections).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-31-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-31-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-31-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-31-999, filed 9/28/01, effective 10/29/01.]

**Chapter 480-40 WAC  
PASSENGER CHARTER CARRIERS**

WAC  
480-40-999

Adoption by reference.

**WAC 480-40-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-40-065 (Equipment—Inspection—Ordered for repairs) and WAC 480-40-100 (Out-of-service criteria).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-40-070 (Operation of motor vehicles) and WAC 480-40-075 (Equipment—Safety) and WAC 480-40-110 (Registered carriers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-40-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-40-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-40-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-40-999, filed 9/28/01, effective 10/29/01.]

**Chapter 480-62 WAC  
RAILROAD COMPANIES—OPERATIONS**

WAC  
480-62-999

Adoption by reference.

**WAC 480-62-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect in November 2004.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices), WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on March 25, 2004.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices).

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet web site for the office of the code reviser ([slc.leg.wa.gov](http://slc.leg.wa.gov)).

(4) **ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on April 29, 2003.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits are available from Global Engineering Documents in Englewood, Colorado.

(5) **ANSI/ISEA 107-2004 - American National Standard for High-Visibility Safety Apparel** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on September 15, 2004.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel are available from Global Engineering Documents in Englewood, Colorado.

(6) **Title 49 United States Code**, cited as 49 U.S.C., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 2, 2002.

(b) This publication is referenced in WAC 480-62-200 (Roadway worker safety and operating rules and statutes).

(c) Copies of Title 49 United States Code are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-62-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-62-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-62-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-999, filed 1/30/01, effective 3/2/01.]

## Chapter 480-70 WAC

## SOLID WASTE AND/OR REFUSE COLLECTION COMPANIES

## WAC

480-70-041	Definitions, general.
480-70-051	Exemptions from rules in chapter 480-70 WAC.
480-70-077	Transferring cash or assuming obligations.
480-70-078	Affiliated interest—Contracts or arrangements.
480-70-079	Affiliated interest and subsidiary transactions report.
480-70-999	Adoption by reference.

**WAC 480-70-041 Definitions, general.** (See WAC 480-70-226 (Tariffs, definitions used in) for definition of terms used primarily in tariff filings.) Unless the language or context indicates that a different meaning is intended, the following words, terms and phrases mean:

**"Affiliated interest"** means a person or corporation as defined in RCW 81.16.010.

**"Application docket"** means a commission publication listing applications requesting operating authority, and commission action taken on applications for temporary authority.

**"Biomedical waste"** means the following types of waste:

**"Animal waste"** means waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

**"Biosafety level 4 disease waste"** means waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the Centers for Disease Control, National Institute of Health, *Biosafety in Microbiological and Biomedical Laboratories*, current edition.

**"Cultures and stocks"** means wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes, but is not limited to, culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

**"Human blood and blood products"** means discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

**"Pathological waste"** means waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for interment or cremation.

**"Sharps waste"** means all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

Note: Certificates issued prior to the effective date of these rules may contain the terms "biohazardous waste" or "infectious waste" in describing services authorized. From the effective date of these rules, those permits shall be understood to allow the transportation of "biomedical waste."

**"Biohazardous or biomedical waste generator"** means any person, by site, whose act or process produces

infectious waste, or whose act first caused an infectious waste to become subject to regulation. In the case where more than one person, e.g., doctors with separate medical practices, are located in the same building, each individual business entity is a separate generator for the purposes of these rules.

**"Biohazardous or biomedical waste transporter"** means any person who transports infectious waste over the highways in a quantity equal to or exceeding one hundred pounds per month for compensation.

**"Biosolids"** means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process.

**"Business of transporting solid waste for collection and/or disposal for compensation"** means those carriers who are primarily in the specialized business of solid waste for collection and/or disposal.

**"Cancellation"** means an act by the commission to terminate a solid waste collection company certificate; or an act by a carrier to discontinue the application of a tariff, a tariff supplement, or a tariff item.

**"Certificate"** means the certificate of public convenience and necessity issued by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW for the operation of solid waste collection companies.

**"Certificated authority"** means the territory and services granted by the commission and described in a company's certificate of public convenience and necessity.

**"City regulation"** means regulation of the operations of a solid waste collection company by a city through issuance of a contract.

**"Classes of companies":**

**"Class A company"** means a traditional solid waste collection company with an annual gross operating revenue from regulated, intrastate operations of five million dollars or more.

**"Class B company"** means a traditional solid waste collection company with an annual gross operating revenue from regulated, intrastate operations of less than five million dollars.

**"Class C company"** means a solid waste collection company that does not provide traditional residential or commercial solid waste operations. This class includes specialized carriers generally hauling specific waste products for specific customers or providing only on-call or nonscheduled service.

**"Classes of service"** means either commercial, specialized, drop box, or residential service.

**"Company"** means a solid waste collection company.

**"Commercial authority"** means authority to provide solid waste collection service to business, institutional, or industrial generators.

**"Commercial recycling service"** means transportation of recyclable commodities from a buy-back center, drop box, or from a commercial or industrial generator of recyclable materials when those recyclable materials are being transported for use other than landfill disposal or incineration. Commercial recycling is regulated under chapter 81.80 RCW.

**"Commercial service"** means solid waste collection service provided to a business, institutional, or industrial generator.

**"Commission"** means the Washington utilities and transportation commission.

**"Common carrier"** means any person who transports solid waste by motor vehicle for compensation.

**"Construction debris" or "construction waste"** means solid waste resulting from the building or renovation of buildings, roads and other man-made structures. Construction debris includes, but is not limited to, materials such as plasterboard, cement, dirt, wood, and brush.

**"Contract carrier"** means a person holding a certificate issued by the commission authorizing transportation of solid waste for collection and/or disposal under special and individual contracts or agreements.

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Demolition waste" or "demolition debris"** means solid waste resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition waste includes, but is not limited to, concrete, brick, bituminous concrete, wood and masonry, composition roofing and roofing paper, steel, and minor amounts of other metals like copper.

**"Disinfect"** means to cleanse by destroying harmful microorganisms.

**"Disposal site"** means the location where any final treatment, utilization, processing, or deposit of solid waste occurs. This term includes, but is not limited to, landfills, transfer stations, and incinerators.

**"Dump truck operator"** means a carrier holding a permit under chapter 81.80 RCW engaged in the operation of dump trucks and similar vehicles used in the transportation of sand, gravel, dirt, debris, and other similar commodities except solid waste. Dump truck operations are usually conducted during the daytime; are local in character; are somewhat seasonal, especially in connection with building or construction projects; and the value of the commodity transported is usually low.

**"Filing"** means any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

**"Garbage"** means those materials of solid waste that are putrescible.

**"Garbage and refuse."** Whenever the phrase "garbage and refuse" is used as a qualifying phrase, it means either garbage or refuse, or both garbage and refuse.

**"Hazardous waste"** means any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262.

**"Incineration"** means to reduce the volume of solid waste by use of an enclosed device using controlled flame combustion.

**"Incinerator"** means a site where solid waste is reduced in volume by use of an enclosed device using controlled flame combustion.

**"Landfill"** means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land-treatment facility.

**"Land-treatment facility"** means the site on which the practice of applying dangerous waste onto or incorporating dangerous waste into the soil surface so that it will degrade or decompose takes place. The term does not include applying waste onto or into the soil surface for the purpose of soil sweetening or soil amendment.

**"Leachate"** means water or other liquid that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases.

**"Motor vehicle"** means any truck, trailer, semi-trailer, tractor or any self-propelled or motor-driven vehicle used on any public highway of this state for the purpose of transporting solid waste for collection and/or disposal.

**"Multiple-family residence"** or **"multifamily residence"** means any structure housing two or more dwelling units.

**"Multifamily service"** means residential service provided to multifamily structures or locations including, but not limited to, duplexes, apartments, mobile home courts, and condominiums.

**"Nonputrescible"** means not capable of being readily decomposed by microorganisms.

**"Occasional"** means occurring at irregular and infrequent intervals. The term is qualitative, not quantitative, in that the term applies to services that are only performed from time-to-time, not that the solid waste hauling is only a small part of services offered.

**"Packer"** means a device or vehicle specially designed to compress loose materials.

**"Person"** means an individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.

**"Private carrier"** means a person who transports solid waste in the person's own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.

EXCEPTION: A person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste is not a private carrier.

**"Private motor vehicle"** means a vehicle owned or operated by a private carrier.

**"Private road"** means a road not normally available for use by the public.

**"Public highway"** means every street, road, or highway in this state normally available for use by the public.

**"Putrescible"** means capable of being readily decomposed by microorganisms.

**"Recyclable materials"** means materials that are transported for recycling, reprocessing, reclamation, or for any process that extracts or modifies the commodity for reuse or another commercially valuable purpose.

**"Recycling"** means transforming or remanufacturing materials into usable or marketable materials for use other than landfill disposal or incineration.

**"Refuse"** means those materials of solid waste that are not putrescible.

**"Residence"** means the regular dwelling place of an individual or individuals.

**"Residential authority"** means authority to provide solid waste collection from residences.

**"Residential recycling service"** means collection of those solid wastes that are separated for recycling or reuse, such as paper, plastic, metals, and glass, that are identified as recyclable materials pursuant to a local comprehensive solid waste plan.

**"Residential service"** means solid waste collection from residences.

**"Sewer sludge"** means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW, and is transported to a site for disposal.

**"Shipping paper"** means a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required in WAC 480-70-401 (Payment options).

**"Small business"** means any company that has fifty or fewer employees.

**"Solid waste"** or **"solid wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to:

- Garbage;
- Rubbish;
- Refuse;
- Swill;
- Ashes;
- Industrial wastes;
- Sewage sludge;
- Demolition and construction wastes;
- Abandoned vehicles or parts of abandoned vehicles;

and

- Source-separated recyclable materials collected from single and multifamily residences.

**"Solid waste collection"** means collecting solid waste from residential or commercial customers and transporting the solid waste, using a motor vehicle, for collection and/or disposal over the highways of the state of Washington for compensation.

**"Solid waste collection company"** means every common carrier, including a contract carrier, who provides solid waste collection service.

**"Source separation"** means the separation of different kinds of solid waste at the place where the waste originates.

**"Specialized solid waste collection company"** means a company providing other than traditional solid waste collection service. Specialized companies generally haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies.

**"State"** means the state of Washington.

**"Subsidiary"** means any company in which the solid waste company owns directly or indirectly five percent or more of the voting securities, unless the solid waste company demonstrates it does not have control.

**"Suspension"** means an act by the commission to temporarily withhold a solid waste collection company's certificated authority; or an act by the commission to withhold approval of a company's tariff filing.

**"Tariff"** means a document issued by a company, and approved by the commission, containing the services provided, the rates and charges the company bills its customers for those services, and the rules describing how the rates and charges apply.

**"Tariff service territory"** means a company-defined geographic division of its certificated authority in which a specific tariff applies.

**"Third-party waste broker"** means a person or company acting on behalf of a generator of solid waste, usually an industrial or commercial generator, to arrange for collection and/or disposal of solid waste.

**"Traditional solid waste collection company"** means a company engaged in collecting and removing solid waste and recyclable materials from private homes, and/or removing solid waste from commercial establishments, industrial facilities, and other sites. Solid waste is normally picked up on a daily, weekly, or other regular basis. Drivers are usually assigned designated routes to collect curbside residential solid waste or transport cans or containers for commercial businesses. Unless the company's certificate is restricted against doing so, a traditional solid waste collection company may also perform specialized solid waste collection service.

**"Transfer station"** means a staffed, fixed supplemental facility used by persons and route collection vehicles to deposit solid wastes into transfer trailers for transportation to a disposal site. The definition does not usually include detachable containers. However, in counties with a population of less than seventy thousand, and in any county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand that is located east of the crest of the Cascade mountain range, if detachable containers are securely fenced, staffed by an attendant during all hours when the detachable container is open to the public, and tipping fees that cover the cost of providing the containers and the use of the facility are charged, then such detachable containers constitute a transfer station. (Refer to RCW 36.58-.030.)

**"Treatment"** means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting an infectious disease by making it noninfectious. Any waste, except sharps, that has been treated is not considered biohazardous or biomedical waste, and may be considered to be solid waste for purposes and handling.

**"Vehicle"** means every device capable of transporting solid waste on a public highway. The term "vehicle" does not include devices moved by human or animal power or used exclusively on stationary rails or tracks.

**"Yard waste"** or **"yard debris"** means plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. Yard waste includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-70-041, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-041, filed 3/23/01, effective 4/23/01.]

**WAC 480-70-051 Exemptions from rules in chapter 480-70 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-70-051, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-051, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-051, filed 3/23/01, effective 4/23/01.]

**WAC 480-70-077 Transferring cash or assuming obligations.** (1) At least five business days, as defined in WAC 480-07-120 (Office hours), before a Class A company, whose corporate credit/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

(a) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(b) When the threshold in (a) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities;

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court; or

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the utility and its subsidiary or affiliate.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-70-077, filed 2/28/05, effective 3/31/05.]

**WAC 480-70-078 Affiliated interest—Contracts or arrangements.** Prior to the effective date of any contract or

arrangement described in RCW 81.16.020, each solid waste collection company must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except for transactions provided at tariff rates, with affiliated interests. Prior to the effective date of any modification or amendment, the company must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract or arrangement is unwritten, the company must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the company has failed to prove that it is reasonable and consistent with the public interest.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-70-078, filed 2/28/05, effective 3/31/05.]

**WAC 480-70-079 Affiliated interest and subsidiary transactions report.** (1) By June 1 of each year each Class A company must file a report summarizing all transactions that occurred between the company and its affiliated interests, except for transactions provided at tariff rates, and the company and its subsidiaries, during the period January 1 through December 31 of the preceding year.

(2) The information required in this subsection must be for total company and for total state of Washington. The report must include a corporate organization chart of the company and its affiliated interests and subsidiaries.

(3) When total transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the company must provide:

(a) A balance sheet and income statement for such affiliated interest;

(b) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and

(g) A list of all common officers and directors between the solid waste company and each such affiliated interest or subsidiary, along with their titles in each organization.

(4) The company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-70-078 (Affiliated interests—Contracts or arrangements).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-70-079, filed 2/28/05, effective 3/31/05.]

**WAC 480-70-999 Adoption by reference.** In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 40 Code of Federal Regulations**, cited as 40 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on July 1, 2005.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-70-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-70-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-70-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-70-999, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-999, filed 3/23/01, effective 4/23/01.]

## Chapter 480-73 WAC

### HAZARDOUS LIQUID PIPELINE COMPANIES

#### WAC

480-73-010

Application of rules.

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**WAC 480-73-010 Application of rules.** The rules in this chapter apply to hazardous liquid pipeline companies regulated as common carriers under Title 81 RCW. The purpose of these rules is to address the economic regulation of liquid pipeline companies regulated as common carriers.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-010, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-020 Exemptions from rules in chapter 480-73 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-020, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-030 Additional requirements.** (1) These rules do not relieve any company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any company in appropriate circumstances, consistent with the requirements of law.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-030, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-040 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-040, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-050 Tariffs.** (1) Each pipeline company must file tariffs in accordance with the requirements set out in chapter 480-149 WAC titled Tariff Circular No. 6.

(2) In addition to the tariff filing requirements in subsection (1) of this section, the tariff must include the pipeline company's nomination and proration policies and procedures.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-050, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-060 Definitions.** "Affiliated interest" means a person or corporation as defined in RCW 81.16.010.

"Business days" means the same as defined in WAC 480-07-120 (Office hours).

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

"Hazardous liquid pipeline companies" or "pipeline company" means any hazardous liquid pipeline company regulated as a common carrier under Title 81 RCW.

"Investment grade" means a pipeline company whose corporate credit/issuer rating is in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc.

"Nominations" means the method a shipper uses to reserve pipeline capacity for shipments.

"Proration" means the method the carrier uses to allocate space to shippers when nominations exceed the pipeline capacity.

"Subsidiary" means any company in which the pipeline company owns directly or indirectly five percent or more of the voting securities, unless the pipeline company demonstrates it does not have control.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-060, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-110 Filing information.** (1) **Filing.** The commission records center will accept any filing under WAC 480-73-170 (Issuing securities) delivered in person, by mail, telefacsimile, or electronic mail message. The commission records center will accept all other reports required in Part II in person, by mail, or when procedures are in place, electronic mail message.

(2) **Commission may require additional information.** The commission may require information in addition to that specified by statute or in this chapter.

(3) **Information by reference.** When any information required to support a filing is on file with the commission, it is sufficient to make specific reference to the information indicating the proceeding, report, or other filing that contains the referenced information.

(4) **When information is unavailable.** If any required information is unavailable at the time of the filing, the filing must include the reason why the information is not available and state when it will be available.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-73-110, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-110, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-120 Additional reports.** Part II does not supersede any reporting requirement specified in a commission order or limit the commission's ability to request additional information.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-120, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-130 Accounting system requirements.**

(1) Each pipeline company must use the uniform system of accounts applicable to pipeline companies as published by the Federal Energy Regulatory Commission (FERC) in Title 18 of the Code of Federal Regulations (18 CFR), Part 352 - Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. Information about the Code of Federal Regulations regarding the version adopted and where to obtain it is set out in WAC 480-73-999 (Adoption by reference).

(2) Each pipeline company having multistate operations must maintain records in such detail that the costs of property located and business done in Washington can be readily ascertained in accordance with geographic boundaries.

(3) Any deviation from the uniform system of accounts, as prescribed by the FERC, will be accomplished only after due notice and order of this commission.

(4) This rule does not supersede any commission order regarding accounting treatments.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-130, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-140 Expenditures for political or legislative activities.** (1) For ratemaking purposes, the commission will not allow recovery of either direct or indirect expenditures by a pipeline company for political or legislative activities.

(2) For purposes of this rule, political or legislative activities include, but are not limited to:

(a) Encouraging support or opposition to ballot measures, legislation, candidates for a public office, or current public office holders;

(b) Soliciting support for or contributing to political action committees;

(c) Gathering data for mailing lists that are generated for the purposes of encouraging support for or opposition to ballot measures, legislation, candidates for public office, or current office holders, or encouraging support for or contributions to political action committees;

(d) Soliciting contributions or recruiting volunteers to assist in the activities set forth in (a) through (c) of this subsection.

(3) Political or legislative activities do not include activities directly related to appearances before regulatory or local governmental bodies necessary for the pipeline company's operations.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-140, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-150 Retaining and preserving records and reports.** Each pipeline company must retain records and reports in accordance with the 18 CFR, Part 356, Preservation of Records for Oil Pipeline Companies, which the commission adopts by reference. Information about the Code of Federal Regulations regarding the version adopted and where to obtain it is set out in WAC 480-73-999 (Adoption by reference).

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[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-150, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-160 Annual reports.** (1) Each pipeline company must use the commission's annual report form and attach FERC Form No. 6 promulgated by the Federal Energy Regulatory Commission in 18 CFR, Part 357 (Annual, Special or Periodic Reports), for purposes of annual reporting to this commission. Information about the FERC Form No. 6 regarding the version adopted and where to obtain it is set out in WAC 480-73-999 (Adoption by reference).

(2) Each pipeline company must also submit to the commission, in essentially the same format and content as the FERC Form No. 6, a report that documents the costs incurred and the property necessary to provide service to its customers and the revenues obtained in the state of Washington.

(3) Combination and multistate pipeline companies must submit with the annual report their cost allocation methods necessary to develop results of operations in the state of Washington. Approval of cost allocation methods for rate-making purposes is accomplished only by commission order.

(4) The pipeline company must submit the annual report for the preceding calendar year by May 1 of each year.

(5) Economic regulatory fees. An economic regulatory fee is an annual assessment paid by each company to cover the costs of economic regulation of the industry. The economic regulatory fee is separate from the pipeline safety fee identified in WAC 480-75-240 (Annual pipeline safety fee methodology). The maximum economic regulatory fee is set by statute at one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

(a) The maximum economic regulatory fee is assessed each year, unless the commission issues an order establishing the economic regulatory fee at an amount less than the statutory maximum.

(b) The minimum economic regulatory fee that a pipeline company must pay is twenty dollars.

(c) The twenty-dollar minimum economic regulatory fee is waived for any pipeline company that reports less than twenty thousand dollars in gross operating revenue.

(d) A pipeline company must pay its economic regulatory fee by May 1 each year.

(e) The commission does not grant extensions for payment of regulatory fees.

(f) If a company does not pay its economic regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

(g) The commission may issue penalty assessments or take other administrative action if a company fails to pay its regulatory fee.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-160, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-170 Issuing securities.** (1) Before a pipeline company issues stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of



indebtedness, or assumes any obligation or liability as guarantor subject to reporting under RCW 81.08.130, it must file with the commission:

(a) A description of the purposes for which the issuance will be made, including a certification by an officer authorized to do so, that the proceeds from any such financing is for one or more of the purposes allowed by RCW 81.08.030;

(b) A description of the proposed issuance, including the terms of financing; and

(c) A statement as to why the transaction is in the public interest.

(2) Filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute undertaking the issuance of a security, and therefore a filing with the commission is not required under the provisions of RCW 81.08.040. A shelf registration filing is defined under the General Rules and Regulations promulgated under the Securities Act of 1933, Rule 415 - Delayed or Continuous Offering and Sale of Securities.

(3) An authorized representative must sign and date the filing and include a certification or declaration that the information is true and correct under penalty of perjury as set forth in chapter 9A.72 RCW. The certificate or declaration must be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

(4) Within sixty days after the issuance of any securities, except for dividend reinvestment and employee benefit plans, a pipeline company must file with the commission a verified statement:

(a) Outlining the final terms and conditions of the transaction; and

(b) Setting forth actual proceeds from the issuance and, to the extent known, the disposition of proceeds stating the final amount to be used for each purpose allowed by RCW 81.08.030.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-73-170, filed 8/5/05, effective 9/5/05.]

**WAC 480-73-180 Transferring cash or assuming obligations.** (1) At least five business days before a pipeline company whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

(a) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue.

(b) When the threshold in (a) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-

month period, which is based on the prior calendar year gross operating revenue.

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities;

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court; or

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Payments for sweep or cash management accounts.

The foregoing provisions will have no application to sweep and cash management account transfers used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the pipeline company and its subsidiary or affiliate.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-180, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-190 Affiliated interests—Contracts or arrangements.** Prior to the effective date of any contract or arrangement described in RCW 81.16.020, each pipeline company must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except for transactions provided at tariff rates, with any affiliated interest. Prior to the effective date of any modification or amendment, the company must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract or arrangement is unwritten, the company must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the company has failed to prove that it is reasonable and consistent with the public interest.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-190, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-200 Securities report.** Each pipeline company that has issued securities must file with the commission an annual securities transaction report. The report is due ninety days from the end of the company's reporting period, whether a fiscal or calendar year. At a minimum, the report must contain:

(1) A schedule of the securities issued during the reporting period including a detailed description of the final agreements;

(2) A description of the use of proceeds stating the amounts used for each purpose allowed by RCW 81.08.030;

(3) The level of expenses for each of the securities transactions for the reporting period;

(4) A schedule of securities retired, refunded, repurchased, or otherwise removed from the company's capitalization; and

(5) A schedule of securities scheduled to mature in the fiscal or calendar year following the reporting period.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-73-170, filed 8/5/05, effective 9/5/05.]

**WAC 480-73-210 Affiliated interest and subsidiary transactions report.** (1) By June 1 of each year, each pipeline company must file a report summarizing all transactions, except transactions provided at tariff rates, which occurred between the company and each of its affiliated interests, and the company and each of its subsidiaries, during the period January 1 through December 31 of the preceding year.

(2) The information required in this section must be provided for total company and for total state of Washington. The report must include a corporate organization chart showing the pipeline company and how it is related to its affiliated interests and subsidiaries.

(3) When total transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the company must provide:

(a) A balance sheet and income statement for such affiliated interest to the extent such information is publicly available, and if not publicly available but the balance sheet and income statement of a parent of such affiliated interest is publicly available, then the balance sheet and income statement for such parent must be provided;

(b) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and

(g) A list of all common officers and directors between the pipeline company and each such affiliated interest or subsidiary, along with their titles in each organization.

(4) The company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-73-190 (Affiliated interest—Contracts and arrangements).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-210, filed 2/28/05, effective 3/31/05.]

**WAC 480-73-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington

state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on April 1, 2005.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-73-999, filed 10/10/05, effective 11/10/05; 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-73-999, filed 2/28/05, effective 3/31/05.]

## Chapter 480-75 WAC

### HAZARDOUS LIQUID, GAS, OIL AND PETROLEUM PIPELINE COMPANIES—SAFETY

#### WAC

480-75-240  
480-75-999

Annual pipeline safety fee methodology.  
Adoption by reference.

**WAC 480-75-240 Annual pipeline safety fee methodology.** (1) Every hazardous liquid pipeline company subject to inspection or enforcement by the commission will pay an annual pipeline safety fee as established in the methodology set forth in section (2) below.

(2) The fee will be set by general order of the commission entered before July 1 of each year and will be collected in four equal installments payable on the first day of each calendar quarter.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations, less the amount received in total base grants through the Federal Department of Transportation and less any amount received from penalties collected under RCW 19.122.050. Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by such grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each company's share of the total of all pipeline miles within Washington as reported by the companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fees will be

allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) Any program hours related to a staff investigation of an incident attributed to third-party damage resulting in penalties collected under RCW 19.122.055 will not be directly attributed to the operator of the damaged pipeline for fee-setting purposes.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

(3) By June 1 of each year the commission staff will mail to each company an invoice.

(4) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For those companies subject to RCW 81.24.010 the portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(5) Any company wishing to contest the amount of the fee imposed under this section must pay the fee and, within 6 months of the due date of the fee, file a petition in writing with the commission requesting a refund. The petition shall state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; and any reasons why the commission may not impose the fee. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, 80.24.060, and 81.24.090. 05-17-017 (Docket No. P-041344, General Order No. R-523), § 480-75-240, filed 8/4/05, effective 7/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 2001 c 238 § 2. 02-03-016 (Docket No. —UG-010522, General Order No. R-497), § 480-75-240, filed 1/4/02, effective 2/4/02.]

**WAC 480-75-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, Parts 195 and 199 including all appendices and amendments except for 195.0, 195.1, 199.1 and 199.2 published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-630 (Incident reporting), and WAC 480-75-660 (Operations safety plan requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore,

<http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 1998 edition.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from The American Society of Mechanical Engineers, Park Avenue New York, New York.

(3) The 2001 edition of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** 19th edition.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 19th edition are available from the Office of API Publishing Services in Washington DC.

(5) The commission adopts **API RP standard 1117** Second Edition, August 1996.

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Second Edition are available from Global Engineering Documents in Englewood, Colorado.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-75-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-75-999, filed 12/22/03, effective 1/22/04. Statutory Authority: RCW 80.01.040 and 80.04.160. 02-18-032 (Docket No. TO-000712, General Order No. R-500), § 480-75-999, filed 8/26/02, 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-75-999, filed 9/28/01, effective 10/29/01.]

## Chapter 480-80 WAC

### UTILITIES GENERAL—TARIFFS, PRICE LISTS, AND CONTRACTS

#### WAC

480-80-123

480-80-204

480-80-206

Tariff changes that do not require statutory notice.

Price lists format and content.

Price list availability to customers.

**WAC 480-80-123 Tariff changes that do not require statutory notice.** (1) A utility must file with the commission tariff changes that do not require statutory notice at least one day before the effective date.

(2) The filing must include a transmittal letter as set forth in WAC 480-80-104 (Transmittal letter).

(3) Tariff changes that do not require statutory notice include:

(a) Initial tariffs filed by a newly regulated utility;

(b) A filing for a service not previously contained within a regulated utility's existing tariff;

(c) A change to a telecommunications tariff not affecting the rates or charges paid by customers;

(d) A change to a tariff, other than a telecommunications tariff, that does not affect the public; and

(e) A change in a banded rate when notice to customers has been or will be given in accordance with tariff rules applicable to the service.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-80-123, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-123, filed 5/14/02, effective 6/17/02.]

#### **WAC 480-80-204 Price lists format and content. (1)**

A price list must include, for each service in the price list, a description of the service, any limitations, terms, or conditions on the offering of that service, and all rates, charges, or prices at which the service is offered.

(2) A price list must:

(a) Plainly state the places where the offered telecommunications service will be rendered;

(b) Include the effective date clearly marked on each page;

(c) Include the complete name, address, phone number, unified business identifier (UBI) number, and if available, the mail address and web page address of the issuing utility; and

(d) Conform to all applicable laws, rules, and orders. The filing of a nonconforming price list will not be deemed a waiver of the law, rule, or order. A company may not enforce a price list provision that conflicts with a law, rule, or order unless the commission waives that law, rule, or order.

(3) A price list of a competitive telecommunications company may state the rates, charges, or prices as maximum amounts rather than as specific prices.

(4) A price list of a telecommunications company not classified as competitive offering a service classified as competitive under RCW 80.36.330 may state the rates, charges, or prices as maximum and minimum amounts rather than as specific prices. The minimum price must comply with the cost requirement in subsection (6) of this section.

(5) A transmittal letter must accompany a price list change in compliance with the provisions of WAC 480-80-203.

(6) The rates, charges, and prices of services classified as competitive under RCW 80.36.330 must cover the cost of providing the service. Costs must be determined using a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-80-204, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-204, filed 5/14/02, effective 6/17/02.]

#### **WAC 480-80-206 Price list availability to customers.**

(1) Each telecommunications company offering service under a price list must maintain a complete copy of the price list on a web site accessible to the public using standard web browser software.

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(2) Each telecommunications company offering service under a price list must provide to any customer making a written or oral request a copy of the price list sheets applicable to that customer's service. The telecommunications company must provide the price list at no charge to the customer. This subsection does not apply if the telecommunications company makes available for public inspection, at a location within the customer's exchange, a complete copy of the price list.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-80-206, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-206, filed 5/14/02, effective 6/17/02.]

### **Chapter 480-90 WAC**

#### **GAS COMPANIES—OPERATIONS**

##### **WAC**

480-90-008	Exemptions from rules in chapter 480-90 WAC.
480-90-023	Definitions.
480-90-207	Filing information.
480-90-209	Additional reports.
480-90-242	Issuing securities.
480-90-244	Transferring cash or assuming obligations.
480-90-245	Affiliated interests—Contracts or arrangements.
480-90-248	Transfers of property.
480-90-252	Federal Energy Regulatory Commission (FERC) Form No. 2.
480-90-257	Commission basis report.
480-90-262	Securities report.
480-90-264	Affiliated interest and subsidiary transactions report.
480-90-268	Essential utilities services contracts report.
480-90-275	Actual results for Washington operations report.
480-90-999	Adoption by reference.

#### **DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

480-90-208	Financial reporting requirements. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 2003 c 296. 04-05-031 (Docket No. A-031232, General Order No. R-512), § 480-90-208, filed 2/11/04, effective 3/13/04. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-90-208, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-208, filed 5/3/01, effective 6/3/01.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-90-218	Securities, affiliated interests, and transfers of property. [Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-218, filed 5/3/01, effective 6/3/01.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

**WAC 480-90-008 Exemptions from rules in chapter 480-90 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-008, filed 2/28/05, effective 3/31/05. Statutory Authority:

RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-90-008, filed 11/24/03, effective 1/1/04; 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-008, filed 5/3/01, effective 6/3/01.]

**WAC 480-90-023 Definitions. "Affiliated interest"** means a person or corporation as defined in RCW 80.16.010.

**"Applicant"** means any person, corporation, partnership, government agency, or other entity that applies for service with a gas utility or who reapplies for service at a new or existing location after service has been discontinued.

**"British thermal unit"** (Btu) means the quantity of heat required to raise the temperature of one pound of water at 60° Fahrenheit and standard pressure, one degree Fahrenheit.

**"Business day"** means Monday through Friday, 8:00 a.m. until 5:00 p.m., except for official state holidays.

**"Commission"** means the Washington utilities and transportation commission.

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Customer"** means any person, corporation, partnership, government agency, or other entity that applied for, has been accepted for, and is currently receiving service.

**"Cubic foot of gas"** means a volumetric unit of measure used in sales and testing.

**"Sales volume"** means a cubic foot of gas for billing purposes is the amount of gas that occupies a volume of one cubic foot under the temperature and pressure conditions existing in the customer's meter. Temperature and/or pressure recording or compensating devices may be used to reflect temperature or pressure base conditions for computing the volume sold. Temperature and/or pressure compensation factors may be used to compute the volume of gas sold as provided in the utility's tariff.

**"Testing volume"** means a cubic foot of gas for testing purposes is the amount that occupies a volume of one cubic foot at a temperature of 60° Fahrenheit and pressure of 14.73 pounds per square inch absolute.

**"Gas"** means any fuel or process gas, whether liquid petroleum gas, manufactured gas, natural gas, or any mixture of these.

**"Liquefied petroleum gas"** means a gas consisting of vapors of one or more of the paraffin hydrocarbons, or a combination of one or more of these vapors with air.

**"Manufactured gas"** means any gas produced artificially by any process.

**"Natural gas"** means a mixture of gaseous hydrocarbons (chiefly methane) and nonhydrocarbons that occur naturally in the earth.

**"Subsidiary"** means any company in which the gas utility owns directly or indirectly five percent or more of the voting securities, unless the utility demonstrates it does not have control.

**"Therm"** means a unit of heat equal to 100,000 Btus.

**"Gas utility"** (utility) means any business entity (e.g., corporation, company, association, joint stock association, or partnership) or person, including a lessee, trustee, or court appointed receiver, that meets the three following conditions:

Owns, controls, operates, or manages any gas plant in Washington state;

Manufactures, transmits, distributes, sells, or furnishes gas to the public for compensation; and

Is subject to the commission's jurisdiction.

Terms used in this chapter and defined in the public service laws of Washington state (i.e., principally Title 80 RCW) have the same meaning here as in the statutes. Terms not defined in these rules or the applicable statutes have the meaning generally accepted in the gas industry, or their ordinary meaning if there is no meaning generally accepted in the gas industry.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-023, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-023, filed 5/3/01, effective 6/3/01.]

**WAC 480-90-207 Filing information. (1) Filing.** The commission record center will accept any filing under WAC 480-90-242 (Issuing securities) delivered in person, by mail, telefacsimile, or electronic mail message. The commission records center will accept all other reports required in Part III in person, by mail, or when procedures are in place, electronic mail message.

**(2) Commission may require additional information.** The commission may require pertinent information in addition to that specified by statute or in this chapter.

**(3) Information by reference.** When any information required to support a filing is on file with the commission, it is sufficient to make specific reference to the information indicating the proceeding, report, or other filing that contains the referenced information.

**(4) When information is unavailable.** If any required information is unavailable at the time of the filing, the filing must include the reason why the information is not available and state when it will be available.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-90-207, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-207, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-209 Additional reports.** Part III does not supersede any reporting requirement specified in a commission order or limit the commission's ability to request additional information.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-209, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-242 Issuing securities.** For the purpose of this section:

"Securities" means stocks, stock certificates, other evidence of interest or ownership, bonds, notes other than those notes exempted from reporting under RCW 80.08.043, or other evidence of indebtedness, or any obligation or liability as guarantor subject to reporting under RCW 80.08.130.

(1) Before a gas utility issues a security, it must file with the commission:

(a) A description of the purposes for which the issuance will be made, including a certification by an officer authorized to do so, that the proceeds from any such financing is for one or more of the purposes allowed by RCW 80.08.030;

(b) A description of the proposed issuance, including the terms of financing; and

(c) A statement as to why the transaction is in the public interest.

(2) A commission order is not required for such a filing. The utility may request a written order affirming that the utility has complied with the requirements of RCW 80.08.040. The utility must submit the request for a commission order, along with the information required in subsection (1) of this section, at least fifteen business days before the requested effective date for the order. Requests for supplemental orders may be exempt from the fifteen business day requirement.

(3) Filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute undertaking the issuance of a security, and therefore a filing with the commission is not required under the provisions of RCW 80.08.040. A shelf registration filing is defined under the General Rules and Regulations promulgated under the Securities Act of 1933, Rule 415 -Delayed or Continuous Offering and Sale of Securities.

(4) An authorized representative must sign and date the filing and include a certification or declaration that the information is true and correct under penalty of perjury as set forth in chapter 9A.72 RCW. The certificate or declaration must be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

(5) Filings under this section may be submitted with portions designated confidential pursuant to WAC 480-07-160 (Confidential information).

(6) Within sixty days after the issuance of any securities, except for dividend reinvestment and employee benefit plans, a utility must file with the commission a verified statement:

(a) Outlining the final terms and conditions of the transaction; and

(b) Setting forth actual proceeds from the issuance and, to the extent known, the disposition of proceeds stating the final amount to be used for each purpose allowed by RCW 80.08.030.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-90-242, filed 8/5/05, effective 9/5/05.]

**WAC 480-90-244 Transferring cash or assuming obligations.** (1) At least five business days before a gas utility whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the utility must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds described in (a) or (b) of this subsection.

(a) The utility must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of two percent, which is based on the utility's common shareholders equity.

(b) When the threshold in (a) of this subsection has been reached, the utility must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the utility's common shareholders equity.

A utility's common shareholder equity is determined according to the latest annual report filed pursuant to WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2). Information about the FERC Form No. 2 regarding the version adopted and where to obtain it is set out in WAC 480-90-999 (Adoption by reference).

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities, including fuel supplies (e.g., gas, coal, or oil);

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court;

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the utility and its subsidiary or affiliate.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-244, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-245 Affiliated interests—Contracts or arrangements.** Prior to the effective date of any contract or arrangement described in RCW 80.16.020, each gas utility must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except for transactions provided at tariff rates, with any affiliated interest. Prior to the effective date of any modification or amendment, the utility must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract or arrangement is unwritten, the utility must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the utility has failed to prove that it is reasonable and consistent with the public interest.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-245, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-248 Transfers of property.** Before selling, leasing, or assigning any of its property or facilities which are necessary or useful in the performance of its duties to the public, or before acquiring property or facilities of another public utility, a gas utility must obtain from the commission an order authorizing such transaction in accordance with chapter 80.12 RCW (Transfers of property) and chapter

480-143 WAC (Commission general—Transfers of property).

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-90-248, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-248, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-252 Federal Energy Regulatory Commission (FERC) Form No. 2.** (1) Each gas utility must use the annual report form (FERC Form No. 2) promulgated by the Federal Energy Regulatory Commission in Title 18 of the Code of Federal Regulations, Part 260, for purposes of this report to the commission. Data required by RCW 80.04.080 (Annual reports), but not included in the FERC Form No. 2, must also be submitted with the annual report. The utility must submit the annual report for the preceding calendar year, along with the regulatory fee, by May 1st of each year. If not presented in the prescribed FERC Form No. 2, the annual report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales. Information about the FERC Form No. 2 regarding the version adopted and where to obtain it is set out in WAC 480-90-999 (Adoption by reference).

(2) Each utility must also submit to this commission, in essentially the same format and content as the FERC Form No. 2, a report that documents the costs incurred and the property necessary to furnish utility service to its customers and the revenues obtained in the state of Washington. The report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales.

(3) Combination and multistate utilities must submit with the annual report their cost allocation methods necessary to develop results of operations for the state of Washington. Approval of cost allocation methods for rate-making purposes is accomplished only by commission order.

(4) The total utility results of operations reported by each utility in its annual report to the commission must agree with the results of operations shown on the utility's books and records.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-90-252, filed 10/10/05, effective 11/10/05; 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-252, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-257 Commission basis report.** (1) Commission basis reports are due within four months of the end of a utility's fiscal year.

(2) The intent of the commission basis report is to depict the gas operations of a gas utility under normal temperature and power supply conditions during the reporting period. The commission basis report must include:

(a) Booked results of gas operations and rate base, and all the necessary adjustments as accepted by the commission in the utility's most recent general rate case or subsequent orders;

(b) Results of operations adjusted for any material out-of-period, nonoperating, nonrecurring, and extraordinary

items or any other item that materially distorts reporting period earnings and rate base; and

(c) Booked revenues and power supply expenses adjusted to reflect operations under normal temperature and power supply conditions before the achieved return on rate base is calculated.

(3) Commission basis reports should not include adjustments that annualize price, wage, or other cost changes during a reporting period, nor new theories or approaches that have not been previously addressed and resolved by the commission.

(4) Each utility must submit the basis of any cost allocations and the allocation factors necessary to develop the commission basis results of gas operations for the state of Washington.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-257, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-262 Securities report.** Each gas utility that has issued securities must file with the commission an annual securities transaction report. The report is due five months from the end of the utility's reporting period, whether a fiscal or calendar year. At a minimum, the report must contain:

(1) A schedule of the securities issued during the reporting period including a detailed description of the final agreements;

(2) A description of the use of proceeds stating the amounts used for each purpose allowed by RCW 80.08.030;

(3) The level of expenses for each of the securities transactions for the reporting period;

(4) A schedule of securities retired, refunded, repurchased, or otherwise removed from the utility's capitalization; and

(5) A schedule of securities scheduled to mature in the fiscal or calendar year following the reporting period.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-90-262, filed 8/5/05, effective 9/5/05.]

**WAC 480-90-264 Affiliated interest and subsidiary transactions report.** (1) Each gas utility must file an annual report summarizing all transactions, except transactions provided at tariff rates, that occurred between the utility and its affiliated interests, and the utility and its subsidiaries. The report is due one hundred twenty days from the end of the utility's fiscal or calendar year (reporting period). The report must include a corporate organization chart of the utility and its affiliated interests and subsidiaries.

(2) When total transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the utility must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the utility must provide:

(a) A balance sheet and income statement for such affiliated interest;

(b) A description of the products or services provided to or from the utility and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the utility and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the utility for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the utility has transactions; and

(g) A list of all common officers and directors between the gas utility and each such affiliated interest or subsidiary, along with their titles in each organization.

(3) The report required in this section supersedes the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(4) The utility is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-90-245 (Affiliated interest—Contracts and arrangements).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-264, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-268 Essential utilities services contracts report.** (1) When the annual value to a vendor exceeds one and one-half percent of total company sales to ultimate customers as reported in the utility's most recent Federal Energy Regulatory Commission (FERC) Form No. 2 (or combined Forms No. 1 and No. 2 for combined utilities), each gas utility must report the total contracts with that vendor for essential utility services specifying the relevant terms of the contract or contracts, along with anticipated associated charges. Information about the FERC Form No. 2 regarding the version adopted and where to obtain it is set out in WAC 480-90-999 (Adoption by reference).

(2) The report of essential service vendors is due one hundred twenty days from the end of each reporting period, whether a fiscal or calendar year.

(3) For each vendor the report must include:

(a) The parties to the contract;

(b) The type of contract;

(c) The essential obligations of each party to the contract;

(d) The length of the contract;

(e) The budgeted annual dollar value of the contract during the reporting period; and

(f) The actual payments for services rendered under the contract during the reporting period.

(4) Essential utility services are those services necessary to provide gas service such as:

(a) Operation or maintenance of gas system infrastructure;

(b) Operation or maintenance of computer systems;

(c) Purchase of gas for classes of customer service regulated by the commission; and

(d) Construction of gas system infrastructure.

(5) The requirements under this section may be satisfied in whole or in part by cross-reference to the applicable portions of other documents that the utility has on file with the commission.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-268, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-275 Actual results for Washington operations report.** Within forty-five days of the end of each quarter, each gas utility must file a report of actual results for Washington operations. The results of operations report must contain each of the three monthly balances and the latest twelve months' ending balance for all accounts of the uniform system of accounts. The report must include the average customer count and total unit sales per customer class for each reported period.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-275, filed 2/28/05, effective 3/31/05.]

**WAC 480-90-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, 2005.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligation), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.



[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-90-999, filed 10/10/05, effective 11/10/05; 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-999, filed 2/28/05, effective 3/31/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-90-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-90-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-999, filed 5/3/01, effective 6/3/01.]

## Chapter 480-92 WAC

### LOW-LEVEL RADIOACTIVE WASTE

#### WAC

480-92-016	Exemptions from rules in chapter 480-92 WAC.
480-92-021	Definitions.
480-92-050	Reporting requirements—Annual report.
480-92-055	Reporting requirements—Special reports.

**WAC 480-92-016 Exemptions from rules in chapter 480-92 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-92-016, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-05-016 (Order R-458, Docket No. UR-980080), § 480-92-016, filed 2/5/99, effective 3/8/99.]

**WAC 480-92-021 Definitions.** The definitions contained in chapter 81.108 RCW and RCW 81.04.010 are incorporated by reference in this section. To the extent that any of the definitions in this chapter differ from statutory definitions, the statutory definitions shall control.

**"Affiliated interest"** means a person or corporation as defined in RCW 81.16.010.

**"Commission"** means the Washington utilities and transportation commission.

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Effective rate"** means the highest permissible rate, for the disposal of low-level radioactive waste, calculated as the lowest contract rate plus an administrative fee, if applicable, determined pursuant to RCW 81.108.040.

**"Extraordinary volume"** means volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

**"Extraordinary volume adjustment"** means a mechanism that allocates the potential rate reduction benefits of an extraordinary volume among all generators and the generator responsible for such extraordinary volume as described in RCW 81.108.070.

**"Generator"** means a person, partnership, association, corporation, or any other entity that, as a part of its activities, produces low-level radioactive waste.

**"Inflation adjustment"** means a mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period, as measured by a common, verifiable price index as determined in RCW 81.108.040.

**"Low-level radioactive waste"** means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than ten nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations nor naturally occurring or accelerator produced radioactive material.

**"Maximum disposal rate"** the maximum disposal is the rate a site operator may charge generators as provided in RCW 81.108.050.

**"Site"** means a location, structure, or property used or to be used for the storage, treatment, or disposal of low-level radioactive waste for compensation within the state of Washington.

**"Site operator"** means a low-level radioactive waste site operating company, which includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

**"Subsidiary"** means any company in which the low-level waste company owns directly or indirectly five percent or more of the voting securities, unless the low-level waste company demonstrates it does not have control.

**"Volume adjustment"** means a mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-92-021, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-05-016 (Order R-458, Docket No. UR-980080), § 480-92-021, filed 2/5/99, effective 3/8/99. Statutory Authority: RCW 80.01.040 and 1991 c 272. 92-03-050 (Order R-366, Docket No. T-910676), § 480-92-021, filed 1/10/92, effective 2/10/92.]

**WAC 480-92-050 Reporting requirements—Annual report.** An annual report is an end-of-the-year summary of financial and operational activity that each site operator is required to file with the commission.

(1) Each year the commission provides an annual report form and instructions to each site operator at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual report. A site operator that does not receive an annual report form must contact the commission to request a copy of the form.

(2) A site operator must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must agree with source documents maintained at site operator offices.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-92-050, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-05-016 (Order R-458, Docket No. UR-980080), § 480-92-050, filed 2/5/99, effective 3/8/99. Statutory Authority: RCW 80.01.040 and 1991 c 272. 92-03-050 (Order R-366, Docket No. T-910676), § 480-92-050, filed 1/10/92, effective 2/10/92.]

**WAC 480-92-055 Reporting requirements—Special reports.** (1) **Affiliated interests—Contracts or arrangements.** Prior to the effective date of any contract or arrangement described in RCW 81.16.020, each site operator must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except transactions provided at tariff rates, with any affiliated interest. Prior to the effective date of any modification or amendment, the site operator must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract or arrangement is unwritten, the site operator must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the site operator has failed to prove that it is reasonable and consistent with the public interest.

(2) **Transferring cash or assuming obligations.**

(a) At least five business days, as defined in WAC 480-07-120 (Office hours), before a site operator, whose corporate credit/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a)(i) or (ii) of this subsection.

(i) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(ii) When the threshold in (a)(i) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(b) The reporting requirements in subsection (1) of this section do not include payments for:

- (i) Federal and state taxes;
- (ii) Goods, services, or commodities;
- (iii) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court;
- (iv) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:
  - (A) Net income during such period; or
  - (B) The average level of dividends over the preceding three years; or
- (v) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the custom-

ary and routine cash management functions between or among the site operator and its subsidiary or affiliate.

(3) **Affiliated interest and subsidiary transactions report.**

(a) By June 1 of each year, each site operator must file a report summarizing all transactions, except transactions provided at tariff rates, that occurred between the site operator and its affiliated interests, and the site operator and its subsidiaries, during the period January 1 through December 31 of the preceding year. The information required in this subsection must be for total company and for total state of Washington. The report must include a corporate organization chart of the company and its affiliated interests and subsidiaries.

(b) When total transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the site operator must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the site operator must provide:

- (i) A balance sheet and income statement for such affiliated interest;
- (ii) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;
- (iii) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;
- (iv) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;
- (v) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;
- (vi) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and
- (vii) A list of all common officers and directors between the low-level waste company and each such affiliated interest or subsidiary, along with their titles in each organization.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-92-055, filed 2/28/05, effective 3/31/05.]

## Chapter 480-93 WAC GAS COMPANIES—SAFETY

### WAC

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480-93-008	Additional requirements.
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480-93-017	Filing requirements for design, specification, and construction procedures.
480-93-018	Maps, drawings, and records of gas facilities.
480-93-020	Proximity considerations.
480-93-040	Location of gas compressor stations on gas pipelines.
480-93-080	Welder and plastic joiner identification and qualification.
480-93-100	Valves.

480-93-110 Corrosion control.  
 480-93-115 Casing of pipelines.  
 480-93-124 Pipeline markers.  
 480-93-130 Multistage pressure regulation.  
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 480-93-155 Increasing maximum allowable operating pressure.  
 480-93-160 Reporting requirements of proposed construction.  
 480-93-170 Tests and reports for pipelines.  
 480-93-175 Moving and lowering metallic gas pipelines.  
 480-93-178 Protection of plastic pipe.  
 480-93-180 Plan of operations and maintenance procedures; emergency policy; reporting requirements.  
 480-93-185 Gas leak investigation.  
 480-93-186 Leak evaluation.  
 480-93-18601 Leak classification and action criteria—Grade—Definition—Priority of leak repair.  
 480-93-187 Gas leak records.  
 480-93-188 Gas leak surveys.  
 480-93-200 Reporting requirements for operators of gas facilities.  
 480-93-223 Civil penalty for violation of RCW 80.28.210 and commission gas safety rules.  
 480-93-230 Exemptions from rules in chapter 480-93 WAC.  
 480-93-240 Annual pipeline safety fee methodology.  
 480-93-999 Adoption by reference.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

480-93-002 Application of rules. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-002, filed 8/5/92, effective 9/5/92; Order R-99, § 480-93-002, filed 5/18/77.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-010 Compliance with federal standards. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-010, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 34.05.310, 34.05.356, 80.01.040, 80.04.160 and 80.04.160 [81.04.160]. 99-20-013 (Order R-465, Docket No. A-980247), § 480-93-010, filed 9/24/99, effective 10/25/99. Statutory Authority: RCW 80.01.040. 99-02-037 (Order 457, Docket No. UG-980962), § 480-93-010, filed 12/30/98, effective 1/30/99. Statutory Authority: RCW 80.01.040 and 80.28.210. 96-13-022 (Order R-437, Docket No. UG-951453), § 480-93-010, filed 6/10/96, effective 7/11/96; 95-13-082 (Order R-427, Docket No. UG-950061), § 480-93-010, filed 6/20/95, effective 7/21/95. Statutory Authority: RCW 80.01.040. 93-18-097 (Order R-396, Docket No. UG-930243), § 480-93-010, filed 9/1/93, effective 10/2/93; 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-010, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-010, filed 7/15/71; Order R-5, § 480-93-010, filed 6/6/69, effective 10/9/69.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-030 Proscribed areas. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-030, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-030, filed 7/15/71; Order R-5, § 480-93-030, filed 6/6/69, effective 10/9/69.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-082 Qualification of employees. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-082, filed 8/5/92, effective 9/5/92.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-111 Noncathodically protected gas facilities. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-111, filed 8/5/92, effective 9/5/92.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-112 Corrosive condition investigation. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No.

UG-911261), § 480-93-112, filed 8/5/92, effective 9/5/92.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-120 Exposed pipelines. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-120, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-120, filed 7/15/71; Order R-5, § 480-93-120, filed 6/6/69, effective 10/9/69.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-150 Station maintenance. [Order R-28, § 480-93-150, filed 7/15/71; Order R-5, § 480-93-150, filed 6/6/69, effective 10/9/69.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-183 Pipeline and system pressure reporting. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-183, filed 8/5/92, effective 9/5/92.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-184 Gas leak responsibility. [Order R-101, § 480-93-184, filed 5/18/77.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-190 Being aware of construction work near gas company facilities. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-190, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-190, filed 7/15/71; Order R-5, § 480-93-190, filed 6/6/69, effective 10/9/69.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-210 Interruptions to service. [Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-210, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-210, filed 7/15/71; Order R-5, § 480-93-210, filed 6/6/69, effective 10/9/69.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

480-93-220 Rule of precedence. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-220, filed 9/28/01, effective 10/29/01; Order R-28, § 480-93-220, filed 7/15/71.] Repealed by 05-10-055 (Docket No. UG-011073, General Order No. R-520), filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040.

**WAC 480-93-005 Definitions.** (1) **"Bar hole"** means a hole made in the soil or paving for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(2) **"Building"** means any structure that is normally or occasionally entered by humans for business, residential, or other purposes and where gas could accumulate.

(3) **"Business district"** means an area where the public regularly congregates or where the majority of the buildings on either side of the street are regularly utilized, for financial, commercial, industrial, religious, educational, health, or recreational purposes.

(4) **"CFR"** means the Code of Federal Regulations.

(5) **"Combustible gas indicator" (CGI)** means a device capable of detecting and measuring gas concentrations in air.

(6) **"Commission"** means the Washington utilities and transportation commission.

(7) **"Enclosed space"** means any subsurface structure of sufficient size that could accommodate a person and within which gas could accumulate, e.g., vaults, catch basins, and manholes.

(8) **"Follow-up inspection"** means an inspection performed after a repair has been completed in order to determine the effectiveness of the repair.

(9) **"Gas"** means natural gas, flammable gas, or gas that is toxic or corrosive.

(10) **"Gas associated substructures"** means those devices or facilities utilized by an operator which are not intended for storing, transporting, or distributing gas, such as valve boxes, vaults, test boxes, and vented casing pipe.

(11) **"Gas company"** means, as defined in RCW 80.04.010, every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

(12) **"High occupancy structure or area"** means a building or an outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty or more persons on at least five days a week for ten weeks in any twelve-month period. (The days and weeks need not be consecutive.)

(13) **"Indication"** means a response indicated by a gas detection instrument that has not been verified as a reading.

(14) **"LEL"** means the lower explosive limit of the gas being transported.

(15) **"MAOP"** means maximum allowable operating pressure.

(16) **"Master meters system"** is defined as set forth in 49 CFR § 191.3.

(17) **"Operator":**

(a) For purposes of chapter 480-93 WAC, the term "operator" means:

(i) Every gas distribution company that has tariffs on file with the commission;

(ii) Every city or town that owns, controls, operates, or manages any gas plant in this state; and

(iii) Every other person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance, or operation of pipelines for transporting natural gas in this state; even though such person or corporation does not deliver, sell, or furnish any such gas to any person or corporation within this state. The terms "person" and "corporation" are defined in RCW 80.04.010. "Transporting natural gas by pipeline" means transmission or distribution of natural gas through a pipe.

(b) A single entity may qualify as an operator under one or more of the provisions of this subsection.

(c) The term "operator" includes operators of master meter systems, as that term is defined in WAC 480-93-005.

(18) **"Prompt action"** means to dispatch qualified personnel without undue delay.

(19) **"Psig"** means pounds per square inch gauge.

(20) **"Public service company"** is defined in RCW 80.04.010.

(21) **"Reading"** means a repeatable representation on a combustible gas indicator or equivalent instrument expressed in percent LEL or gas-air ratio.

(22) **"Sniff test"** means a qualitative test utilizing both threshold and readily detectable methods for determining proper concentrations of odorant.

(23) **"Transmission line"** means a gas pipeline as defined in 49 CFR § 192.3 on the date specified in WAC 480-93-999.

(24) **"Weak link"** means a device or method used when pulling polyethylene pipe to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

(25) Other terms that correspond to those used in 49 CFR Parts 191, 192 and 199 (Minimum Federal Safety Standards for Gas Pipelines) must be construed as used therein on the date specified in WAC 480-93-999.

[Statutory Authority: RCW 80.04.160, 80.28.210(1), and 80.01.040(1). 05-23-174 (Docket No. PG-050933, General Order No. R-524), § 480-93-005, filed 11/23/05, effective 12/24/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-005, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-005, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040 and 80.28.210. 95-13-082 (Order R-427, Docket No. UG-950061), § 480-93-005, filed 6/20/95, effective 7/21/95. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-005, filed 8/5/92, effective 9/5/92; Order R-100, § 480-93-005, filed 5/18/77. Formerly WAC 480-93-001.]

**WAC 480-93-007 Application of rules.** (1) This chapter applies to the following activities of operators: The construction, operation, maintenance, and safety of gas facilities used in the gathering, storage, distribution, and transmission of gas in this state.

(2) This chapter does not apply to customer-owned facilities, where the customer is the end user, and the customer-owned facilities are on the customer's side of the distribution meter. Customer-owned transmission lines are subject to the rules in this chapter.

(3) This chapter does not apply to those operators of gas facilities exclusively under federal jurisdiction for compliance with pipeline safety regulations.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-007, filed 5/2/05, effective 6/2/05.]

**WAC 480-93-008 Additional requirements.** (1) These rules do not relieve any operator from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any operator in appropriate circumstances, consistent with the requirements of law.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-008, filed 5/2/05, effective 6/2/05.]

**WAC 480-93-009 Severability.** If any provision of this chapter or its application to any entity or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-009, filed 5/2/05, effective 6/2/05.]

**WAC 480-93-012 Computation of time.** The time frames identified in this chapter are calculated as follows:

(1) "Monthly" means any time within the calendar month.

(2) "Annually" means any time within the calendar year.

(3) "Six months" means the same calendar date of the sixth consecutive month (e.g., January 1, to July 1, would be six months).

(4) "Seven and one-half months" means the same calendar date of the seventh consecutive month plus an additional fifteen days.

(5) "Fifteen months" means the same calendar date of the fifteenth consecutive month.

(6) "Three years" means the same calendar date of the third consecutive year.

(7) "Thirty-nine months" means the same calendar date of the thirty-ninth consecutive month.

(8) "Five years" means the same calendar date of the fifth consecutive year.

(9) "Ten years" means the same calendar date of the tenth consecutive year.

(10) "Calendar year" means twelve consecutive months beginning January 1 and ending December 31.

(11) For calendar dates that end on a weekend or holiday, the next business day shall be considered the time frame end date.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-012, filed 5/2/05, effective 6/2/05.]

**WAC 480-93-013 Covered tasks.** (1) Background. 49 CFR §§ 192.803 through 192.809 prescribe the requirements associated with qualifications for operator personnel to perform "covered tasks." 49 CFR § 192.801 defines a "covered task." In WAC 480-93-999, the commission adopts 49 CFR §§ 192.801 through 192.809.

(2) In this section, the commission includes "new construction" in the definition of "covered task." Accordingly, for the purpose of this chapter, the commission defines a covered task that will be subject to the requirements of 49 CFR §§ 192.803 through 192.809 as an activity, identified by the operator, that:

- (a) Is performed on a pipeline facility;
- (b) Is an operations, maintenance, or new construction task;
- (c) Is performed as a requirement of Part 192 CFR; and
- (d) Affects the operation or integrity of the pipeline.

(3) In all other respects, the requirements of 49 CFR §§ 192.801 through 192.809 apply to this chapter.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-013, filed 5/2/05, effective 6/2/05.]

**WAC 480-93-015 Odorization of gas.** (1) All natural gas that is transported by pipeline must be odorized at a concentration in air of one-fifth of the lower explosive limit, so that the gas is readily detectable by a person with a normal sense of smell.

(2) Operators must use odorant testing instrumentation when conducting sniff tests. Sniff tests must be performed at

least once monthly. Master meter operators who comply with CFR § 192.625(f) are exempt from this requirement.

(3) Instruments used to conduct odorant sniff tests must be maintained, tested for accuracy, calibrated, and operated in accordance with the manufacturer's recommendations. When there are no manufacturer's recommendations, operators must conduct accuracy checks and calibrate instruments if outside specified tolerances, at least once annually.

(4) Operators must keep all records of odorant usage, sniff tests performed, and equipment calibration for five years.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-015, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-015, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-015, filed 8/5/92, effective 9/5/92.]

**WAC 480-93-017 Filing requirements for design, specification, and construction procedures.** (1) Any operator intending to operate a gas pipeline facility in this state must file with the commission all applicable construction procedures, designs, and specifications used for each pipeline facility prior to operating the pipeline. All procedures must detail the acceptable types of materials, fittings, and components for the different types of facilities in the operator's system.

(2) With the exception of emergency situations, any construction plans that do not conform with a gas company's existing and accepted construction procedures, designs, and specifications on file with the commission, must be submitted to the commission for review at least forty-five days prior to the initiation of construction activity.

[Statutory Authority: RCW 80.04.160, 80.28.210(1), and 80.01.040(1). 05-23-174 (Docket No. PG-050933, General Order No. R-524), § 480-93-017, filed 11/23/05, effective 12/24/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-017, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-017, filed 8/5/92, effective 9/5/92.]

**WAC 480-93-018 Maps, drawings, and records of gas facilities.** (1) In addition to any document required to be maintained by this chapter, each operator must also prepare, maintain, and make available to the commission, any record, map or written procedure required by federal law to be kept by an operator concerning the reporting of gas releases, and the design, construction, testing, or operation and maintenance of gas pipelines.

(2) Nothing in subsection (1) of this section limits the commission's right to inspect any other accounts, books, papers or documents of any public service company, pursuant to RCW 80.04.070.

(3) Operators must update records within six months of completion of construction activity and make them available to appropriate company operations personnel.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-018, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-018, filed 8/5/92, effective 9/5/92.]

**WAC 480-93-020 Proximity considerations.** (1) Each operator must submit a written request and receive commission approval prior to:

(a) Operating any gas pipeline facility at greater than five hundred psig that is within five hundred feet of any of the following places:

(i) A building that is in existence or under construction prior to the date authorization for construction is filed with the commission, and that is not owned and used by the petitioning operator in its gas operations; or

(ii) A high occupancy structure or area that is in existence or under construction prior to the date authorization for construction is filed with the commission; or

(iii) A public highway, as defined in RCW 81.80.010(3).

(b) Operating any gas pipeline facility at greater than two hundred fifty psig, up to and including five hundred psig, that is operated within one hundred feet of either of the following places:

(i) A building that is in existence or under construction prior to the date authorization for construction is filed with the commission, and that is not owned and used by the petitioning operator in its gas operations; or

(ii) A high occupancy structure or area that is in existence or under construction prior to the date authorization for construction is filed with the commission.

(2) For proposed new construction of pipelines having the characteristics listed in subsection (1)(a) or (b) of this section, operators must provide documentation proving that it is not practical to select an alternate route that will avoid such locations and further provide documents that demonstrate that the operator has considered the possibility of the future development of the area and has designed their pipeline facilities accordingly.

(3) During the review process, operators must provide maps and records to the commission showing the exact location of the pipeline and the shortest direct distance to the places described in subsection (1)(a) and (b) of this section. Upon request of the commission, the operator must provide the maintenance, construction, and operational history of the pipeline system and an aerial photograph showing the exact location of the pipeline in reference to places listed in subsection (1)(a) and (b) of this section.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-020, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-020, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-020, filed 7/15/71; Order R-5, § 480-93-020, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-040 Location of gas compressor stations on gas pipelines.** (1) Gas compressor stations that are designed to operate at pressures in excess of two hundred fifty psig, and that have an installed capacity equal to or greater than one thousand horsepower, must be located at least five hundred feet away from any existing buildings that are not under the control of the operator.

(2) Gas compressor stations that are designed to operate at pressures in excess of two hundred fifty psig, and that have an installed capacity of less than one thousand horsepower must be located at least two hundred fifty feet away from any existing buildings that are not under the control of the operator.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-040, filed 5/2/05, effective 6/2/05; Order R-28, § 480-93-040, filed 7/15/71; Order R-5, § 480-93-040, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-080 Welder and plastic joiner identification and qualification.** (1) All welding procedures and welders, except welders listed in (a) of this subsection, must be qualified to API Standard 1104 or section IX of the ASME Boiler and Pressure Vessel Code.

(a) Oxyacetylene welders may qualify under 49 CFR § 192 Appendix C, but may only weld the following size pipe:

(i) Nominal two-inch or smaller branch connections to nominal six-inch or smaller main or service pipe.

(ii) Nominal two-inch or smaller below ground butt welds.

(iii) Nominal four-inch or smaller above ground manifold and meter piping operating at 10 psig or less.

(iv) Appendix C welders must be requalified at least twice annually, but not to exceed seven and one-half months between qualification tests.

(b) When testing welders or qualifying procedures, operators must use the necessary testing equipment to measure the amperage, voltage, and speed of travel. All essential variables, as defined by the applicable procedure, must be recorded and documented as performed during the welder and procedure testing.

(c) For the purposes of (b) of this subsection, "essential variable" is defined as any variable in the welding procedure, which, according to the procedure being used, would require the requalification of the procedure if changed from or performed outside a specified range. "Speed of travel" is defined as the actual per pass welding time in minutes divided by the length of the weld in inches.

(d) Qualified written welding procedures must be located on-site where welding is being performed.

(2) Personnel qualified to join plastic pipe must be requalified at least once annually, but not to exceed fifteen months between qualifications.

(a) Qualified written plastic joining procedures must be located on-site where plastic joining is being performed.

(b) Plastic joiners must be requalified under an applicable procedure, if during any twelve-month period that person has not made any joints under that procedure.

(c) In order to ensure compliance with (b) of this subsection and Title 49 CFR Part 192.285(c), each operator must have a method of tracking production joints. This method must be outlined in the operator's procedures manual. Production joints need to be tracked only to the extent that shows compliance with this requirement. Operators may elect not to track production joints, in which case personnel qualified to join plastic pipe must be requalified at a frequency not to exceed twelve months.

(3) Welders and plastic joiners must carry appropriate identification and qualification cards or certificates showing the name of the welder or joiner, their qualifications, the date of qualification and the operator whose procedures were followed for the qualification. Welder and plastic joiner qualification cards are subject to commission inspection at all times when qualified personnel are working on facilities subject to commission jurisdiction.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-080, filed 5/2/05, effective 6/2/05; Order R-28, § 480-93-080, filed 7/15/71; Order R-5, § 480-93-080, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-100 Valves.** (1) Each operator must have a written valve maintenance program detailing the valve selection process, inspection, maintenance, and operating procedures. The written program must detail which valves will be maintained under 49 CFR § 192.745, 49 CFR § 192.747, and this subsection. The written program must also outline how the operator will monitor and maintain valves during construction projects to ensure accessibility. The following criteria and locations must be considered when selecting which valves require annual inspections and maintenance under 49 CFR § 192.747:

- (a) Each pressure regulating station.
- (b) Principal feeds into business districts.
- (c) Geographical size of the area to be isolated.
- (d) Number of potential customers affected.
- (e) Pipeline size and operating pressures.
- (f) Class locations.
- (g) Potential threats including, but not limited to, earthquakes, floods, and landslides.
- (h) Emergency response time.
- (i) High occupancy structures or areas.

(2) Each operator must have a written service valve installation and maintenance program detailing the valve selection process, inspection, maintenance, and operating procedures. The written program must detail which new services will be required to have valves installed and maintained under this section. Preexisting services with valves already installed, and meeting the same inspection criteria established for new valve installation, must be maintained in accordance with subsection (3) of this section. The following criteria and/or locations must be considered when selecting which services will have valves installed and/or maintained under this section.

- (a) Services to churches, schools, hospitals.
- (b) Service line length and size.
- (c) Service line pressure.
- (d) Services to buildings occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate.
- (e) Services to commercial or industrial buildings or structures.
- (f) Services to high occupancy structures or areas.

(3) All service valves selected for inspection in the program required in subsection (2) of this section must be operated and maintained at least once annually, but not to exceed fifteen months between operation and maintenance.

(4) Operators must fully implement the requirements of subsections (2) and (3) of this section within one year of the adoption date of this rule.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-100, filed 5/2/05, effective 6/2/05; Order R-28, § 480-93-100, filed 7/15/71; Order R-5, § 480-93-100, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-110 Corrosion control.** (1) Operators must record and retain a record of each cathodic protection test, survey, or inspection required by 49 CFR Subpart I, and

chapter 480-93 WAC. Records of each test, survey, or inspection must be kept for a minimum of five years except those specified in 49 CFR § 192.491(c) requiring retention for the life of the facility.

(2) Each operator must complete remedial action within ninety days to correct any cathodic protection deficiencies known and indicated by any test, survey, or inspection. An additional thirty days may be allowed for remedial action if due to circumstances beyond the operator's control it is not possible to complete remedial action within ninety days. Each operator must be able to provide documentation to the commission indicating that remedial action was started in a timely manner and that all efforts were made to complete remedial action within ninety days. (Examples of circumstances allowing operators to exceed the ninety-day time frame include right of way permitting issues, availability of repair materials, or unusually long investigation or repair requirements.)

(3) Cathodic protection equipment and instrumentation must be maintained, tested for accuracy, calibrated, and operated in accordance with the manufacturer's recommendations. When there are no manufacturer's recommendations, then instruments must be tested for accuracy at an appropriate schedule determined by the operator.

(4) Each operator's procedures manual must have written procedures explaining how cathodic protection related surveys, reads, and tests will be conducted. Examples of such procedures include, but are not limited to, how to determine IR drop (as defined in 49 CFR § 192 Appendix D), how to conduct electrical surveys, how to test casings for electrical isolation, how to test casings for shorted conditions, and how to measure and interpret 49 CFR § 192 Appendix D criteria.

(5) Operators must conduct inspections or tests for electrical isolation between metallic pipeline casings and metallic pipelines at least once annually, but not to exceed fifteen months between inspections or tests. The test or inspection must also determine whether the pipeline has adequate levels of cathodic protection at the casing to pipeline interface. These requirements do not apply to unprotected copper inserted in ferrous pipe.

(a) For each casing installed prior to September 5, 1992, that does not have test leads, the operator must be able to demonstrate that other test or inspection methods are acceptable and that test lead wires are not necessary to monitor for electrical isolation and adequate cathodic protection levels.

(b) Whenever electrical isolation tests or inspections indicate that a possible shorted condition exists between a casing and a pipeline, the operator must conduct a follow-up test within ninety days to determine whether an actual short exists. The operator's procedures manual must have a level or threshold that would indicate a potential shorted condition and must also detail the method of determining whether the casing is actually shorted to the pipeline.

(c) The operator must clear the shorted condition where practical.

(d) Whenever a short exists between a pipeline and casing, the operator must perform a leak survey within ninety days of discovery and at least twice annually thereafter, but not to exceed seven and one-half months between leak surveys until the shorted condition is eliminated.

(6) Operators must record the condition of all underground metallic facilities each time the facilities are exposed.

(7) Operators must have a written program to monitor for indications of internal corrosion. The program must also have remedial action requirements for areas where internal corrosion is detected.

(8) On all cathodically protected pipelines, the operator must take a cathodic protection test reading each time an employee or representative of the operator exposes the facility and the protective coating is removed.

(9) Each operator must have a written atmospheric corrosion control monitoring program. The program must have time frames for completing remedial action.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-110, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-110, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-110, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-110, filed 7/15/71; Order R-5, § 480-93-110, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-115 Casing of pipelines.** (1) Whenever an operator installs a steel pipeline in a casing, the casing must be bare steel.

(2) For casings installed after September 5, 1992, operators must attach separate test lead wires to each casing without vents, and to the steel gas pipeline to verify that no electric short exists between the two, and that an adequate level of cathodic protection is applied to the steel pipeline.

(3) Whenever an operator installs a main or transmission line in a casing or conduit of any type material, the operator must seal the casing ends to prevent or slow the migration of gas in the event of a leak.

(4) Whenever an operator installs a service line in a casing or conduit, the operator must seal the casing at the end nearest the building wall to prevent or slow the migration of gas towards the building in the event of a leak.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-115, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-115, filed 8/5/92, effective 9/5/92.]

**WAC 480-93-124 Pipeline markers.** (1) Operators must place pipeline markers at all railroad, road, irrigation, and drainage ditch crossings, and at all fence lines where a pipeline crosses private property, or where a pipeline or pipeline facility is exposed.

(2)(a) For buried pipelines, operators must place pipeline markers approximately five hundred yards apart, if practical, and at points of horizontal deflection of the pipeline.

(b) The following pipelines must have pipeline markers installed, notwithstanding any exceptions in 49 CFR § 192.707(b):

(i) Where practical, on all mains operating above two hundred fifty psig;

(ii) On both sides of crossings of navigable waterways;

(iii) On both sides of river, creek, or irrigation canal crossings where hydraulic scouring, dredging, or other activity could pose a risk to the pipeline; and

(iv) On both sides of railroad crossings.

(3) Where gas pipelines are attached to bridges or otherwise span an area, operators must place pipeline markers at both ends of the suspended pipeline. Each operator must conduct inspections at least annually, but not to exceed fifteen months between inspections, and maintain the markers to ensure that they are visible and legible.

(4) Operators must replace markers that are reported damaged or missing within forty-five days.

(5) Surveys of pipeline markers not associated with subsection (3) of this section must be conducted as frequently as necessary, to maintain the markers to ensure that they are visible and legible, but at intervals not to exceed five years. The survey records must be kept for a minimum of ten years.

(6) Operators must have maps, drawings or other sufficient records indicating class locations and other areas where pipeline markers are required.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-124, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-124, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-124, filed 8/5/92, effective 9/5/92.]

#### **WAC 480-93-130 Multistage pressure regulation.**

Where gas pressures are reduced in two or more stages, an operator must install the necessary regulators and equipment in such a manner as to provide protection between regulator stages. The purpose is to minimize the potential dangers of failures of one stage of regulator equipment resulting from fire, explosion, or damage of any kind, from adversely affecting the operation of the other stage or stages of regulation. Operators must ensure, when practical to do so, there is a minimum of fifty feet of separation between regulator stages.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-130, filed 5/2/05, effective 6/2/05; Order R-28, § 480-93-130, filed 7/15/71; Order R-5, § 480-93-130, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-140 Service regulators.** (1) Operators must install, operate, and maintain service regulators in accordance with federal and state regulations, and in accordance with the manufacturer's recommended installation and maintenance practices to insure proper operation.

(2) Operators must inspect and test service regulators and associated safety devices during the initial turn-on, and when a customer experiences a pressure problem. Testing must include determining the gas regulator's outlet set pressure at a specified flow rate. Operators must use pressure gauges downstream of the regulator during testing. Safety devices such as fracture discs are not required to be tested.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-140, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-140, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-140, filed 7/15/71; Order R-5, § 480-93-140, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-155 Increasing maximum allowable operating pressure.** (1) At least forty-five days before uprating to a MAOP greater than sixty psig, each operator must submit to the commission for review a written plan of procedures including all applicable specifications with drawings of



the affected pipeline systems. At a minimum, the plan must include the following:

(a) A list of all affected gas facilities, including pipes, fittings, valves, and other affected equipment, with the manufacturer's specified maximum operating pressure limits, their specified minimum yield strength (SMYS) at the intended MAOP, and any other applicable specifications or limitations;

(b) Original design and construction standards;

(c) Original pressure test records;

(d) Previous operating pressures identifying the dates and lengths of time at that pressure;

(e) Records of all leaks, regardless of cause, and the dates and methods of repair;

(f) Where the pipeline is being uprated to a MAOP that produces a hoop stress of twenty percent or more of the SMYS, records of the original welding standards and welders;

(g) Maintenance records of all affected regulator stations and system relief valves for the past three years or three most recent inspections, whichever is longer;

(h) Where applicable, relief valve capacities at the proposed MAOP compared to regulator flow capacities, with calculations;

(i) Cathodic protection readings of the affected pipeline and facilities, including rectifier readings, for the past three years or three most recent inspections, whichever is longer; and

(j) Any additional information that the commission may deem necessary to evaluate the pressure increase.

(2) Uprates must be based on a previous or current pressure test that will substantiate the intended MAOP.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-155, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-155, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-155, filed 8/5/92, effective 9/5/92.]

**WAC 480-93-160 Reporting requirements of proposed construction.** (1) Each operator must file a proposed construction report with the commission at least forty-five days prior to construction or replacement of any segment of a gas transmission pipeline equal to or greater than one hundred feet in length. Emergency repairs are exempt from this section.

(2) The report must describe the proposed route and the specifications for the pipeline and must include, but is not limited to, the following items:

(a) Description and purpose of the proposed pipeline;

(b) Route map showing the type of construction to be used throughout the length of the line, and delineation of class location as defined in 49 CFR Part 192.5, and incorporated boundaries along the route;

(c) Location and specification of principal valves, regulators, and other auxiliary equipment to be installed as a part of the pipeline system to be constructed. The operator must submit aerial photographs upon request;

(d) MAOP for the pipeline being constructed;

(e) Location and construction details of all river crossings or other unusual construction requirements encountered

en route, e.g., places where pipe will be exposed or it is impractical to provide required cover, bridge crossings, lines to be laid parallel to railroads or state highways, including encroachments, and any other areas requiring special or unusual design and construction considerations;

(f) Proposed corrosion control program to be followed including specifications for coating and wrapping, and the method to ensure the integrity of the coating using holiday detection equipment;

(g) Welding specifications; and

(h) Bending procedures to be followed if needed.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-160, filed 5/2/05, effective 6/2/05; Order R-28, § 480-93-160, filed 7/15/71; Order R-5, § 480-93-160, filed 6/6/69, effective 10/9/69.]

#### **WAC 480-93-170 Tests and reports for pipelines.** (1)

Operators must notify the commission in writing at least two business days prior to the commencement of any pressure test of a gas pipeline that will have a MAOP that produces a hoop stress of twenty percent or more of the specified minimum yield strength of the pipe used.

(a) The pressure tests of any such gas pipeline built in Class 3 or Class 4 locations, as defined in 49 CFR § 192.5, or within one hundred yards of a building, must be at least eight hours in duration.

(b) When the test medium is to be a gas or compressible fluid, each operator must notify the appropriate public officials so that adequate public protection can be provided for during the test.

(c) In an emergency situation where it is necessary to maintain continuity of service, the requirements of subsection (1) of this section and subsection (1)(a) of this section may be waived by notifying the commission by telephone prior to performing the test.

(2) The minimum test pressure for any steel service line or main, regardless of the intended operating pressure, must be determined by multiplying the intended MAOP by a factor determined in accordance with the table located in 49 CFR § 192.619 (a)(2)(ii).

(3) Operators must perform pressure tests for all new or replacement pipeline installations.

(4) All service lines that are broken, pulled, or damaged, resulting in the interruption of gas supply to the customer, must be pressure tested from the point of damage to the service termination valve (generally the meter set) prior to being placed back into service.

(5) Operators may only use pretested pipe when it is not feasible to conduct a pressure test.

(6) Operators must perform soap tests at the tie-in joints at not less than the current operating pressure of the pipeline.

(7) Operators must keep records of all pressure tests performed for the life of the pipeline and must document the following information:

(a) Operator's name;

(b) Employee's name;

(c) Test medium used;

(d) Test pressure;

(e) Test duration;

(f) Pipe size and length;

(g) Dates and times; and

(h) Test results.

(8) Where feasible, operators must install and backfill plastic pipe prior to pressure testing to expose any potential damage that could have occurred during the installation and backfill process.

(9) Where multiple pressure tests are performed on a single installation, operators must maintain a record of each test. An example of a single installation with multiple tests would be any continuous on-going job or installation such as a new plat or long main installation where more than one pressure test was conducted during construction.

(10) Pressure testing equipment must be maintained, tested for accuracy, or calibrated, in accordance with the manufacturer's recommendations. When there are no manufacturer's recommendations, then pressure testing equipment must be tested for accuracy at an appropriate schedule determined by the operator. Test equipment must be tagged with the calibration or accuracy check expiration date. The requirements of this section also apply to equipment such as pressure charts, gauges, dead weights or other devices used to test, monitor or check system pressures or set-points.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-170, filed 5/2/05, effective 6/2/05; Order R-28, § 480-93-170, filed 7/15/71; Order R-5, § 480-93-170, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-175 Moving and lowering metallic gas pipelines.** (1) Except those pipelines detailed in subsection (3) of this section, each operator must prepare a study prior to moving or lowering any metallic pipeline to determine whether the proposed action will cause an unsafe condition. This study must be reviewed and approved by the operator's engineering department and retained in the operator's files for the life of the pipeline. This requirement does not apply to cast iron pipelines, which may not be lowered, or to copper pipelines. The study must include, but is not limited to, the following criteria:

- (a) The required deflection of the pipe;
  - (b) The diameter, wall thickness, and grade of pipe;
  - (c) The characteristics of the pipeline;
  - (d) The terrain and class location;
  - (e) The present condition of the pipeline;
  - (f) The anticipated stresses of the pipeline including the safe allowable stress limits; and
  - (g) The toughness of the steel.
- (2) Pipelines with mechanical or threaded joints must not be moved or lowered.

(3) Pipelines operating at sixty psig or less which have a nominal diameter of two inches or less may be moved or lowered without the required study, if the operator can certify that no undue stresses will be placed on the pipeline and that it can be moved or lowered in a safe manner. The operator must consider factors such as the type of materials, proximity to fittings, joints, and welds, and any other factors that could place undue stress on the pipeline or create an unsafe condition.

(4) A leak survey must be conducted within thirty days from the date any pipeline has been moved or lowered under subsection (3) of this section.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-175, filed

5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-175, filed 8/5/92, effective 9/5/92.]

**WAC 480-93-178 Protection of plastic pipe.** (1) Every operator must have detailed written procedures for the storage, handling, and installation of plastic pipelines. Except for joining procedures, and unless the operator has more stringent procedures, the storage, handling, and installation of all plastic pipe must be in accordance with the latest applicable manufacturer's recommended practices.

(2) The maximum cumulative ultraviolet light exposure limit for plastic pipe is two years, or the manufacturer's recommended limit. The acceptable time limit must be detailed in the operator's procedures manual.

(3) Plastic pipe that is pulled through the ground by mechanical means must have a weak link installed that will ensure the pipe will not be damaged by excessive tensile forces.

(4) When installing plastic pipelines parallel to other underground utilities, operators must ensure there is a minimum of twelve inches of separation from the other utilities. Where a minimum twelve inches of separation is not possible, operators must take adequate precautions, such as inserting the plastic pipeline in conduit, to minimize any potential hazards resulting from the close proximity to the other utilities.

(5) When installing plastic pipelines perpendicular to other underground utilities, operators must ensure there is a minimum of six inches of separation from the other utilities. Where a minimum six inches of separation is not possible, an operator must take adequate precautions, such as inserting the plastic pipeline in conduit, to minimize any potential hazards resulting from the close proximity to the other utilities.

(6) Except for approved steel encased plastic pipe, and except where allowed by (b) of this subsection, the maximum time limit that plastic pipe may be temporarily installed above ground is thirty days.

(a) During temporary installations, operators must monitor and protect above ground plastic pipe from potential damage.

(b) Operators may install above ground plastic pipe for periods longer than thirty days if they have a written monitoring program and notify the commission by telephone prior to exceeding the thirty-day time limit.

(7) Plastic pipe must be bedded in a suitable material as recommended by the pipe manufacturer. Unless otherwise permitted by the manufacturer, plastic pipe must be bedded in an essentially rock-free material.

(8) Plastic pipe may not be squeezed more than one time in the same location.

(9) Plastic pipe must not be squeezed within twelve inches or three pipe diameters, whichever is greater, from any joint or fitting.

[Statutory Authority: RCW 80.04.160, 80.28.210(1), and 80.01.040(1). 05-23-174 (Docket No. PG-050933, General Order No. R-524), § 480-93-178, filed 11/23/05, effective 12/24/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-178, filed 5/2/05, effective 6/2/05.]

**WAC 480-93-180 Plan of operations and maintenance procedures; emergency policy; reporting requirements.** (1) Each operator must have a plan and procedure manual for operation, maintenance, inspection, and emergency response activities. The manual must comply with the provisions of the "Pipeline Safety Improvement Act of 2002." The manual must include plans and procedures for all requirements of 49 CFR § 192 and chapter 480-93 WAC, and any plans or procedures used by an operator's associated contractors.

(2) Plans must be filed with the commission as soon as practical for review and determination as to their adequacy, when properly executed, to achieve an acceptable level of safety. The commission may, after notice and opportunity for hearing, require that a manual be revised or amended. Applicable portions of the manual related to a procedure being performed on the pipeline must be retained on-site where the activity is being performed.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-180, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-180, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-180, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-180, filed 7/15/71; Order R-5, § 480-93-180, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-185 Gas leak investigation.** (1) Operators must promptly investigate any notification of a leak, explosion, or fire, which may involve gas pipelines or other gas facilities, received from any outside source such as a police or fire department, other utility, contractor, customer, or the general public. Where the investigation reveals a leak, the operator must grade the leak in accordance with WAC 480-93-186, and take appropriate action. The operator must retain the leak investigation record for the life of the pipeline.

(2) In the event of an explosion, fire, death, or injury, the operator must not remove any suspected gas facility until the commission or the lead investigative authority has designated the release of the gas facility. Once the situation is made safe, the operator must keep the facility intact until directed by the lead investigative authority.

(3) When leak indications are found to originate from a foreign source or facility such as gasoline vapors, sewer, marsh gas, or from customer-owned piping, the operator must take appropriate action to protect life and property. Leaks that represent an on-going, potentially hazardous situation must be reported promptly to the owner or operator of the source facility and, where appropriate, to the police department, fire department, or other appropriate governmental agency. If the property owner or an adult person occupying the premises is not available, the operator must, within twenty-four hours of the leak investigation, send by first-class mail, addressed to the person occupying the premises, a letter explaining the results of the investigation. The operator must keep a record of each letter sent for five years.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-185, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-185, filed 8/5/92, effective 9/5/92; Order R-102, § 480-93-185, filed 5/18/77.]

**WAC 480-93-186 Leak evaluation.** (1) Based on an evaluation of the location and/or magnitude of a leak, the operator must assign one of the leak grades defined in WAC 480-93-18601 to establish the leak repair priority. An operator may use an alphabetical grade classification, i.e., Grade A for Grade 1, Grade B for Grade 2, and Grade C for Grade 3 if it has historically used such a grading designation. Operators must apply the same criteria used for initial leak grading when reevaluating leaks.

(2) Each operator must establish a procedure for evaluating the concentration and extent of gas leakage. When evaluating any leak, the operator must determine and document the perimeter of the leak area. If the perimeter of the leak extends to a building wall, the operator must extend the investigation inside the building. Where the reading is in an unvented, enclosed space, the operator must consider the rate of dissipation when the space is ventilated and the rate of accumulation when the space is resealed.

(3) The operator must check the perimeter of the leak area with a combustible gas indicator. The operator must perform a follow-up inspection on all leak repairs with residual gas remaining in the ground as soon as practical, but not later than thirty days following the repair.

(4) Grade 1 and 2 leaks can only be downgraded once to a Grade 3 leak without a physical repair. After a leak has been downgraded once, the maximum repair time for that leak is twenty-one months.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-186, filed 5/2/05, effective 6/2/05; Order R-103, § 480-93-186, filed 5/18/77.]

**WAC 480-93-18601 Leak classification and action criteria—Grade—Definition—Priority of leak repair.** (1) A "Grade 1 leak" is a leak that represents an existing or probable hazard to persons or property and requiring prompt action, immediate repair, or continuous action until the conditions are no longer hazardous.

(a) Prompt action in response to a Grade 1 leak may require one or more of the following:

- (i) Implementation of the operator's emergency plan pursuant 49 CFR § 192.615;
- (ii) Evacuating the premises;
- (iii) Blocking off an area;
- (iv) Rerouting traffic;
- (v) Eliminating sources of ignition;
- (vi) Venting the area;
- (vii) Stopping the flow of gas by closing valves or other means; or
- (viii) Notifying police and fire departments.

(b) Examples. Grade 1 leaks requiring prompt action include, but are not limited to:

- (i) Any leak, which in the judgment of operating personnel at the scene, is regarded as an immediate hazard;
- (ii) Escaping gas that has ignited unintentionally;
- (iii) Any indication of gas that has migrated into or under a building or tunnel;

(iv) Any reading at the outside wall of a building or where the gas could potentially migrate to the outside wall of a building;

(v) Any reading of eighty percent LEL or greater in an enclosed space;

(vi) Any reading of eighty percent LEL, or greater in small substructures not associated with gas facilities where the gas could potentially migrate to the outside wall of a building; or

(vii) Any leak that can be seen, heard, or felt and which is in a location that may endanger the general public or property.

(2) A "Grade 2 leak" is a leak that is recognized as being not hazardous at the time of detection but justifies scheduled repair based on potential future hazard.

(a) Operators must repair or clear Grade 2 leaks within fifteen months from the date the leak is reported. If a Grade 2 leak occurs in a segment of pipeline that is under consideration for replacement, an additional six months may be added to the fifteen months maximum time for repair provided above. In determining the repair priority, operators should consider the following criteria:

- (i) Amount and migration of gas;
- (ii) Proximity of gas to buildings and subsurface structures;
- (iii) Extent of pavement; and
- (iv) Soil type and conditions, such as frost cap, moisture and natural venting.

(b) Operators must reevaluate Grade 2 leaks at least once every six months until cleared. The frequency of reevaluation should be determined by the location and magnitude of the leakage condition.

(c) Grade 2 leaks vary greatly in degree of potential hazard. Some Grade 2 leaks, when evaluated by the criteria, will require prompt scheduled repair within the next five working days. Other Grade 2 leaks may require repair within thirty days. The operator must bring these situations to the attention of the individual responsible for scheduling leakage repair at the end of the working day. Many Grade 2 leaks, because of their location and magnitude, can be scheduled for repair on a normal routine basis with periodic reevaluation as necessary.

(d) When evaluating Grade 2 leaks, operators should consider leaks requiring action ahead of ground freezing or other adverse changes in venting conditions, and any leak that could potentially migrate to the outside wall of a building, under frozen or other adverse soil conditions.

(e) Examples. Grade 2 leaks requiring action within six months include, but are not limited to:

(i) Any reading of forty percent LEL or greater under a sidewalk in a wall-to-wall paved area that does not qualify as a Grade 1 leak and where gas could potentially migrate to the outside wall of a building;

(ii) Any reading of one hundred percent LEL or greater under a street in a wall-to-wall paved area that does not qualify as a Grade 1 leak and where gas could potentially migrate to the outside wall of a building;

(iii) Any reading less than eighty percent LEL in small substructures not associated with gas facilities and where gas could potentially migrate creating a probable future hazard;

(iv) Any reading between twenty percent LEL and eighty percent LEL in an enclosed space;

(v) Any reading on a pipeline operating at thirty percent of the specified minimum yield strength or greater in Class 3 or 4 locations that does not qualify as a Grade 1 leak; or

(vi) Any leak that in the judgment of operating personnel at the scene is of sufficient magnitude to justify scheduled repair.

(3) A "Grade 3 leak" is a leak that is not hazardous at the time of detection and can reasonably be expected to remain not hazardous.

(a) Operators should reevaluate Grade 3 leaks during the next scheduled survey, or within fifteen months of the reporting date, whichever occurs first, until the leak is regraded or no longer results in a reading.

(b) Examples. Grade 3 leaks requiring reevaluation at periodic intervals include, but are not limited to:

(i) Any reading of less than eighty percent LEL in small gas associated substructures, such as small meter boxes or gas valve boxes; or

(ii) Any reading under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-18601, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-18601, filed 8/5/92, effective 9/5/92; Order R-103, Table 1 (codified as WAC 480-93-18601), filed 5/18/77.]

**WAC 480-93-187 Gas leak records.** Each operator must prepare and maintain permanent gas leak records. The leak records must contain sufficient data and information to permit the commission to assess the adequacy of the operator's leakage program. Gas leak records must contain, at a minimum, the following information:

(1) Date and time the leak was detected, investigated, reported, and repaired, and the name of the employee(s) conducting the investigation;

(2) Location of the leak (sufficiently described to allow ready location by other qualified personnel);

(3) Leak grade;

(4) Pipeline classification (e.g., distribution, transmission, service);

(5) If reported by an outside party, the name and address of the reporting party;

(6) Component that leaked (e.g., pipe, tee, flange, valve);

(7) Size and material that leaked (e.g., steel, plastic, cast iron);

(8) Pipe condition;

(9) Type of repair;

(10) Leak cause;

(11) Date pipe installed (if known);

(12) Magnitude and location of CGI readings left; and

(13) Unique identification numbers (such as serial numbers) of leak detection equipment.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-187, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-187, filed 8/5/92, effective 9/5/92; Order R-104, § 480-93-187, filed 5/18/77.]

**WAC 480-93-188 Gas leak surveys.** (1) Operators must perform gas leak surveys using a gas detection instrument covering the following areas:

(a) Over all mains, services, and transmission lines including the testing of the atmosphere near other utility (gas,

electric, telephone, sewer, or water) boxes or manholes, and other underground structures;

(b) Through cracks in paving and sidewalks;

(c) On all above ground piping (may be checked with either a gas detection instrument or with a soap solution);

(d) Where a gas service line exists, a survey must be conducted at the building wall at the point of entrance, using a bar hole if necessary; and

(e) Within all buildings where gas leakage has been detected at the outside wall, at locations where escaping gas could potentially migrate into and accumulate inside the building.

(2) Gas detection instruments must be maintained, tested for accuracy, calibrated, and operated in accordance with the manufacturer's recommendations. If there are no manufacturer's recommendations, then instruments must be tested for accuracy at least monthly, but not to exceed forty-five days between testing, and include testing at least twelve times per year. Any instrument that fails its applicable tolerances must be calibrated or removed from service.

(3) Gas leak surveys must be conducted according to the following minimum frequencies:

(a) Business districts - at least once annually, but not to exceed fifteen months between surveys. All mains in the right of way adjoining a business district must be included in the survey;

(b) High occupancy structures or areas - at least once annually, but not to exceed fifteen months between surveys;

(c) Mains operating at or above two hundred fifty psig - at least once annually, but not to exceed fifteen months between surveys; and

(d) Where the gas system has cast iron, wrought iron, copper, or noncathodically protected steel - at least twice annually, but not to exceed seven and one-half months between surveys.

(4) Special leak surveys must be conducted under the following circumstances:

(a) Prior to paving or resurfacing, following street alterations or repairs where gas facilities are under the area to be paved, and where damage could have occurred to gas facilities;

(b) In areas where substructure construction occurs adjacent to underground gas facilities, and damage could have occurred to the gas facilities, operators must perform a gas leak survey following the completion of construction, but prior to paving;

(c) Unstable soil areas where active gas lines could be affected;

(d) In areas and at times of unusual activity, such as earthquake, floods, and explosions; and

(e) After third-party excavation damage to services, operators must perform a gas leak survey from the point of damage to the service tie-in.

(5) Survey records must be kept for a minimum of five years. At a minimum, survey records must contain the following information:

(a) Description of the system and area surveyed (including maps and leak survey logs);

(b) Survey results;

(c) Survey method;

(d) Name of the employee who performed the survey;

(e) Survey dates; and

(f) Instrument tracking or identification number.

(6) Each operator must perform self audits of the effectiveness of its leak detection and recordkeeping programs. Operators must maintain records of the self audits for five years. Self audits must be performed as frequently as necessary, but not to exceed three years between audits. At a minimum, self audits should ensure that:

(a) Leak survey schedules meet the minimum federal and state safety requirements for gas pipelines;

(b) Consistent evaluations of leaks are being made throughout the system;

(c) Repairs are made within the time frame allowed;

(d) Repairs are effective; and

(e) Records are accurate and complete.

(7) Operators must fully implement subsection (3)(a) of this section within two years of the adoption of this rule.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-188, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-188, filed 8/5/92, effective 9/5/92; Order R-105, § 480-93-188, filed 5/18/77.]

**WAC 480-93-200 Reporting requirements for operators of gas facilities.** (1) Every operator must give notice to the commission by telephone within two hours of discovering an incident or hazardous condition arising out of its operations that:

(a) Results in a fatality or personal injury requiring hospitalization;

(b) Results in damage to the property of the operator and others of a combined total exceeding fifty thousand dollars;

(c) Results in the evacuation of a building, or high occupancy structures or areas;

(d) Results in the unintentional ignition of gas;

(e) Results in the unscheduled interruption of service furnished by any operator to twenty-five or more distribution customers;

(f) Results in a pipeline or system pressure exceeding the MAOP plus ten percent or the maximum pressure allowed by proximity considerations outlined in WAC 480-93-020;

(g) Is significant, in the judgment of the operator, even though it does not meet the criteria of (a) through (e) of this subsection; or

(h) Results in the news media reporting the occurrence, even though it does not meet the criteria of (a) through (e) of this subsection.

(2) Operators must give notice to the commission by telephone within twenty-four hours of occurrence of every incident or hazardous condition arising out of its operations that results in:

(a) The uncontrolled release of gas for more than two hours;

(b) The taking of a high pressure supply or transmission pipeline or a major distribution supply pipeline out of service;

(c) A pipeline or system operating at low pressure dropping below the safe operating conditions of attached appliances and gas equipment; or

(d) A pipeline or system pressure exceeding the MAOP.

(3) Routine or planned maintenance and operational activities of the operator that result in operator-controlled plant and equipment shut downs, reduction in system pressures, flaring or venting of gas, and normal leak repairs are not reportable items under this section.

(4) Operators must provide to the commission a written report within thirty days of the initial telephonic report required under subsection (1) of this section. At a minimum, written reports must include the following:

- (a) Name(s) and address(es) of any person or persons injured or killed, or whose property was damaged;
- (b) The extent of such injuries and damage;
- (c) A description of the incident or hazardous condition including the date, time, and place;
- (d) A description of the gas facilities involved in the incident or hazardous condition, the system operating pressure at that time, and the MAOP of the facilities involved;
- (e) The date and time the gas facility was made safe;
- (f) The date, time, and type of any temporary or permanent repair made; and
- (g) The cost of the incident to the operator.

(5) Operators must provide to the commission a written report within forty-five days of receiving the failure analysis of any incident or hazardous condition that was due to construction defects or material failure.

(6) Operators must file with the commission the following annual reports no later than March 15 for the preceding calendar year:

(a) A copy of every Pipeline and Hazardous Materials Safety Administration (PHMSA) F-7100.1-1 and F-7100.2-1 annual report required by U.S. Department of Transportation, Office of Pipeline Safety.

(b) A report titled, "Damage Prevention Statistics." The Damage Prevention Statistics report must include in detail the following information:

- (i) Number of gas-related one-call locate requests completed in the field;
- (ii) Number of third-party damages incurred; and
- (iii) Cause of damage, where cause of damage is classified as either:
  - (A) Inaccurate locate;
  - (B) Failure to use reasonable care; or
  - (C) Excavated prior to a locate being conducted.

(c) A report detailing all construction defects and material failures resulting in leakage. Operators must categorize the different types of construction defects and material failures anticipated for their system. The report must include the following:

- (i) Types and numbers of construction defects; and
- (ii) Types and numbers of material failures.

(7) Operators must file with the commission, and with appropriate officials of all municipalities where operators have facilities, the names, addresses, and telephone numbers of the responsible officials of the operator who may be contacted in the event of an emergency. In the event of any changes in operator personnel, the operator must notify immediately the commission and municipalities.

(8) Operators must send daily reports of construction and repair activities electronically to the commission. Operators may send reports either by facsimile or e-mail to the commission. The reports must be received no later than 10:00 a.m.

each day of the scheduled work, and must include both operator and contractor construction and repair activities.

(9) When an operator is required to file a copy of a DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form with the U.S. Department of Transportation, Office of Pipeline Safety, the operator must simultaneously submit a copy of the form to the commission.

[Statutory Authority: RCW 80.04.160, 80.28.210(1), and 80.01.040(1). 05-23-174 (Docket No. PG-050933, General Order No. R-524), § 480-93-200, filed 11/23/05, effective 12/24/05. Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-200, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-200, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-200, filed 7/15/71; Order R-5, § 480-93-200, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-223 Civil penalty for violation of RCW 80.28.210 and commission gas safety rules.** (1) Any gas company that violates any provisions of chapter 480-93 WAC has failed to construct and/or maintain its facilities in a safe and efficient manner in violation of RCW 80.28.210, and is subject to a civil penalty under RCW 80.28.212.

(a) The maximum civil penalty under RCW 80.28.212 for violations by a gas company of any provision of chapter 480-93 WAC (other than WAC 480-93-160 and 480-93-200 (1)(h)) is twenty-five thousand dollars for each violation for each day that the violation persists up to a maximum civil penalty of five hundred thousand dollars for a related series of violations.

(b) The maximum civil penalty under RCW 80.28.212 for violations by a gas company of WAC 480-93-160 or 480-93-200 (1)(h) is one thousand dollars for each violation for each day that the violation persists, up to a maximum civil penalty of two hundred thousand dollars for a related series of violations.

(c) The commission may compromise any civil penalty issued under RCW 80.28.212.

(2) In addition to a civil penalty under RCW 80.28.212, any public service company that violates RCW 80.28.210 or any rule issued thereunder, may also be subject to civil penalties under RCW 80.04.405 and/or 80.04.380.

(3) Any officer, agent, or employee of any public service company who aids or abets in the violations of RCW 80.24.210 or any rule issued thereunder, is subject to a civil penalty under RCW 80.04.405.

(4) Any officer, agent, or employee of any public service company violating RCW 80.28.210 or who procures or aids and abets such a violation, may be subject to civil penalties under RCW 80.04.385.

(5) Any corporation other than a public service company that is subject to RCW 80.28.210 and that violates any provision of chapter 480-93 WAC, has failed to construct and/or maintain its facilities in a safe and efficient manner in violation of RCW 80.28.210, and is subject to a civil penalty under RCW 80.04.387.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-223, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040 and 80.28.210. 95-19-057 (Order R-433, Docket No. UG-950625), § 480-93-223, filed 9/15/95, effective 10/16/95.]

**WAC 480-93-230 Exemptions from rules in chapter 480-93 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules.)

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-230, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040. 92-16-100 (Order R-375, Docket No. UG-911261), § 480-93-230, filed 8/5/92, effective 9/5/92; Order R-28, § 480-93-230, filed 7/15/71; Order R-5, § 480-93-230, filed 6/6/69, effective 10/9/69.]

**WAC 480-93-240 Annual pipeline safety fee methodology.** (1) Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission will pay an annual pipeline safety fee as established in the methodology set forth in section (2) below.

(2) The fee will be set by general order of the commission entered before July 1 of each year and will be collected in four equal installments payable on the first day of each calendar quarter.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations, less the amount received in total base grants through the Federal Department of Transportation and less any amount received from penalties collected under RCW 19.122.050. Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by such grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each company's share of the total of all pipeline miles within Washington as reported by the companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fee commission's annual pipeline safety program allotment will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) Any program hours related to a staff investigation of an incident attributed to third-party damage resulting in penalties collected under RCW 19.122.055 will not be directly attributed to the operator of the damaged pipeline for fee-setting purposes.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each com-

pany's pipeline safety fee including the allocations set forth in (b) of this subsection.

(3) By June 1 of each year the commission staff will mail to each company an invoice.

(4) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For those companies subject to RCW 80.24.010, the portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(5) Any company wishing to contest the amount of the fee imposed under this section must pay the fee and, within 6 months of the due date of the fee, file a petition in writing with the commission requesting a refund. The petition must state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; and any reasons why the commission may not impose the fee. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, 80.24.060, and 81.24.090. 05-17-017 (Docket No. P-041344, General Order No. R-523), § 480-93-240, filed 8/4/05, effective 7/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 2001 c 238 § 2. 02-03-016 (Docket No. UG-010522, General Order No. R-497), § 480-93-240, filed 1/4/02, effective 2/4/02.]

**WAC 480-93-999 Adoption by reference.** In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. For each regulation or standard the commission is adopting by reference is listed the publisher, the scope of what the commission is adopting, the effective date of the regulation or standard the commission is adopting, the place within the commission's rules the regulation or standard is referenced, and the availability of the publication in which the regulation or standard is found.

(1) Title 49 Code of Federal Regulations, cited as 49 CFR, Parts 191, 192, 193, and 199 including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on October 1, 2004, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 199.1. However, in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 CFR § 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005, 480-93-080, 480-93-100, 480-93-110, 480-93-124, 480-93-155, 480-93-170, 480-93-180, and 480-93-18601.

(c) The Code of Federal Regulations is published by the federal government. Copies of Title 49 Code of Federal Regulations are available from most Government Printing Offices, including the Seattle office of the Government Printing Office, as well as from various third-party vendors and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

(2) Section IX of the ASME Boiler and Pressure Vessel Code.

(a) The commission adopts the 2001 edition of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2001 edition) are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York, and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104.

(a) The commission adopts the 19th edition of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (19th edition) are available from the Office of API Publishing Services in Washington DC, and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

[Statutory Authority: RCW 80.04.160, 80.28.210, and 80.01.040. 05-10-055 (Docket No. UG-011073, General Order No. R-520), § 480-93-999, filed 5/2/05, effective 6/2/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-93-999, filed 9/28/01, effective 10/29/01.]

## Chapter 480-100 WAC ELECTRIC COMPANIES

### WAC

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480-100-999	Adoption by reference.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

480-100-208	Financial reporting requirements. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 2003 c 296. 04-05-031 (Docket No. A-031232, General Order No. R-512), § 480-100-208, filed 2/11/04, effective 3/13/04. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-100-208, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-208, filed 5/3/01, effective 6/3/01.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-100-218	Securities, affiliated interests, and transfers of property. [Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-218, filed 5/3/01, effective 6/3/01.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05.

tive 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

**WAC 480-100-008 Exemptions from rules in chapter 480-100 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-008, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-100-008, filed 11/24/03, effective 1/1/04; 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-008, filed 5/3/01, effective 6/3/01.]

**WAC 480-100-023 Definitions. "Affiliated interest"** means a person or corporation as defined in RCW 80.16.010.

**"Applicant"** means any person, corporation, partnership, government agency, or other entity that applies for service with an electric utility or who reapplies for service at a new or existing location after service has been discontinued.

**"Business day"** means Monday through Friday, 8:00 a.m. until 5:00 p.m., except for official state holidays.

**"Commission"** means the Washington utilities and transportation commission.

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Customer"** means any person, corporation, partnership, government agency, or other entity that has applied for, has been accepted, and is currently receiving service.

**"Electric utility (utility)"** means any business entity (e.g., corporation, company, association, joint stock association, or partnership) or person, including a lessee, trustee, or court appointed receiver that meets the following conditions:

Owns, controls, operates, or manages any electric plant for hire in Washington state; and

Is subject to the commission's jurisdiction.

**"Subsidiary"** means any company in which the electric utility owns directly or indirectly five percent or more of the voting securities, unless the utility demonstrates it does not have control.

Terms used in this chapter and defined in the public service laws of Washington state (i.e., principally Title 80 RCW) have the same meaning here as in the statutes. Terms not defined in these rules or the applicable statutes have the meaning generally accepted in the electric industry, or their ordinary meaning if there is no meaning generally accepted in the electric industry.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-023, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-023, filed 5/3/01, effective 6/3/01.]

**WAC 480-100-207 Filing information. (1) Filing.** The commission records center will accept any filing under WAC 480-100-242 (Issuing securities) delivered in person, by mail, telefacsimile, or electronic mail message. The commission



records center will accept all other reports required in Part III in person, by mail, or when procedures are in place, electronic mail message.

(2) **Commission may require additional information.** The commission may require pertinent information in addition to that specified by statute or in this chapter.

(3) **Information by reference.** When any information required to support a filing is on file with the commission, it is sufficient to make specific reference to the information indicating the proceeding, report, or other filing that contains the referenced information.

(4) **When information is unavailable.** If any required information is unavailable at the time of the filing, the filing must include the reason why the information is not available and state when it will be available.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-100-207, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-207, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-209 Additional reports.** Part III does not supersede any reporting requirement specified in a commission order or limit the commission's ability to request additional information.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-209, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-242 Issuing securities.** For the purpose of this section:

"Securities" means stocks, stock certificates, other evidence of interest or ownership, bonds, notes other than those notes exempted from reporting under RCW 80.08.043, or other evidence of indebtedness, or any obligation or liability as guarantor subject to reporting under RCW 80.08.130.

(1) Before an electric utility issues a security, it must file with the commission:

(a) A description of the purposes for which the issuance will be made, including a certification by an officer authorized to do so, that the proceeds from any such financing is for one or more of the purposes allowed by RCW 80.08.030;

(b) A description of the proposed issuance, including the terms of financing; and

(c) A statement as to why the transaction is in the public interest.

(2) A commission order is not required for such a filing. The utility may request a written order affirming that the utility has complied with the requirements of RCW 80.08.040. The utility must submit the request for a commission order, along with the information required in subsection (1) of this section, at least fifteen business days before the requested effective date for the order. Requests for supplemental orders may be exempt from the fifteen business day requirement.

(3) Filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute issuance of a security, and therefore a filing with the commission is not required under the provisions of RCW 80.08.040. A shelf registration filing is defined under the General Rules and Regulations promulgated under

the Securities Act of 1933, Rule 415 - Delayed or Continuous Offering and Sale of Securities.

(4) An authorized representative must sign and date the filing and include a certification or declaration that the information is true and correct under penalty of perjury as set forth in chapter 9A.72 RCW. The certificate or declaration must be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

(5) Filings under this section may be submitted with portions designated confidential pursuant to WAC 480-07-160 (Confidential information).

(6) Within sixty days after the issuance of any securities, except for dividend reinvestment and employee benefit plans, a utility must file with the commission a verified statement:

(a) Outlining the final terms and conditions of the transaction; and

(b) Setting forth actual proceeds from the issuance and, to the extent known, the disposition of proceeds stating the final amount to be used for each purpose allowed by RCW 80.08.030.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-100-242, filed 8/5/05, effective 9/5/05.]

**WAC 480-100-244 Transferring cash or assuming obligations.** (1) At least five business days before an electric utility whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the utility must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds described in (a) or (b) of this subsection.

(a) The utility must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of two percent, which is based on the utility's common shareholders equity.

(b) When the threshold in (a) of this subsection has been reached, the utility must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the utility's common shareholders equity.

A utility's common shareholder equity is determined according to the latest annual report filed pursuant to WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1). Information about the FERC Form No. 1 regarding the version adopted and where to obtain it is set out in WAC 480-100-999 (Adoption by reference).

(2) The reporting requirements in subsection (1) in this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities, including fuel supplies (e.g., gas, coal, or oil);

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court;

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

- (i) Net income during such period; or
- (ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the utility and its subsidiary or affiliate.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-244, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-245 Affiliated interests—Contracts or arrangements.** Prior to the effective date of any contract or arrangement described in RCW 80.16.020, each electric utility must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except transactions provided at tariff rates, with any affiliated interest. Prior to the effective date of any modification or amendment, the utility must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract or arrangement is unwritten, the utility must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the utility has failed to prove that it is reasonable and consistent with the public interest.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-245, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-248 Transfers of property.** Before selling, leasing, or assigning any of its property or facilities which are necessary or useful in the performance of its duties to the public, or before acquiring property or facilities of another public utility, an electric utility must obtain from the commission an order authorizing such transaction in accordance with chapters 80.12 RCW (Transfers of property) and 480-143 WAC (Commission general—Transfers of property).

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-100-248, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-248, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-252 Federal Energy Regulatory Commission (FERC) Form No. 1.** (1) Each electric utility must use the annual report form (FERC Form No. 1) promulgated by the Federal Energy Regulatory Commission in Title 18 of the Code of Federal Regulations, Part 141, for purposes of this report to the commission. Data required by RCW 80.04.080 (Annual reports), but not included in the FERC Form No. 1, must also be submitted with the annual report. The utility must submit the annual report for the preceding calendar year, along with the regulatory fee, by May 1st of each year. If not presented in the prescribed FERC Form No. 1, the annual report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales. Information about the FERC Form No. 1 regarding the version adopted and where

to obtain it is set out in WAC 480-100-999 (Adoption by reference).

(2) Each utility must also submit to this commission, in essentially the same format and content as the FERC Form No. 1, a report that documents the costs incurred and the property necessary to furnish utility service to its customers and the revenues obtained in the state of Washington. The report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales.

(3) Combination and multistate utilities must submit with the annual report their cost allocation methods necessary to develop results of operations for the state of Washington. Approval of cost allocation methods for rate-making purposes is accomplished only by commission order.

(4) The total utility results of operations reported by each utility in its annual report to the commission must agree with the results of operations shown on the utility's books and records.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-252, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-257 Commission basis report.** (1) Commission basis reports are due within four months of the end of a utility's fiscal year.

(2) The intent of the commission basis report is to depict the electric operations of an electric utility under normal temperature and power supply conditions during the reporting period. The commission basis report must include:

(a) Booked results of electric operations and rate base, and all the necessary adjustments as accepted by the commission in the utility's most recent general rate case or subsequent orders;

(b) Results of operations adjusted for any material out-of-period, nonoperating, nonrecurring, and extraordinary items or any other item that materially distorts reporting period earnings and rate base; and

(c) Booked revenues and power supply expenses adjusted to reflect operations under normal temperature and power supply conditions before the achieved return on rate base is calculated.

(3) Commission basis reports should not include adjustments that annualize price, wage, or other cost changes during a reporting period, nor new theories or approaches that have not been previously addressed and resolved by the commission.

(4) Each utility must submit the basis of any cost allocations and the allocation factors necessary to develop the commission basis results of electric operations for the state of Washington.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-257, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-262 Securities report.** Each electric utility that has issued securities must file with the commission an annual securities transaction report. The report is due five months from the end of the utility's reporting period, whether a fiscal or calendar year. At a minimum, the report must contain:

(1) A schedule of the securities issued during the reporting period including a detailed description of the final agreements;

(2) A description of the use of proceeds stating the amounts used for each purpose allowed by RCW 80.08.030;

(3) The level of expenses for each of the securities transactions for the reporting period;

(4) A schedule of securities retired, refunded, repurchased, or otherwise removed from the utility's capitalization; and

(5) A schedule of securities scheduled to mature in the fiscal or calendar year following the reporting period.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-100-262, filed 8/5/05, effective 9/5/05.]

**WAC 480-100-264 Affiliated interest and subsidiary transactions report.** (1) Each electric utility must file an annual report summarizing all transactions, except transactions provided at tariff rates, that occurred between the utility and its affiliated interests, and the utility and its subsidiaries. The report is due one hundred fifty days from the end of each reporting period, whether a fiscal or calendar year. The report must include a corporate organization chart of the utility and its affiliated interests and subsidiaries.

(2) When total transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the utility must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the utility must provide:

(a) A balance sheet and income statement for such affiliated interest;

(b) A description of the products or services provided to or from the utility and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the utility and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the utility for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the utility has transactions; and

(g) A list of all common officers and directors between the electric utility and each such affiliated interest or subsidiary, along with their titles in each organization.

(3) The report required in this section supersedes the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(4) The utility is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC

480-100-245 (Affiliated interest—Contracts and arrangements).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-264, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-268 Essential utilities services contracts report.** (1) When the annual transactions with a vendor exceed one and one-half percent of total company sales to ultimate customers as reported in the utility's most recent Federal Energy Regulatory Commission (FERC) Form No. 1 (or combined Forms No. 1 and No. 2 for combined utilities), each electric utility must report the total contracts with that vendor for essential utility services specifying the relevant terms of the contract or contracts, along with anticipated associated charges. Information about the FERC Form No. 1 regarding the version adopted and where to obtain it is set out in WAC 480-100-999 (Adoption by reference).

(2) The report of essential service vendors is due one hundred twenty days from the end of each reporting period, whether a fiscal or calendar year.

(3) For each vendor the report must include:

(a) The parties to the contract;

(b) The type of contract;

(c) The essential obligations of each party to the contract;

(d) The length of the contract;

(e) The budgeted annual dollar value of the contract during the reporting period; and

(f) The actual payments for services rendered under the contract during the reporting period.

(4) Essential utility services are those services necessary to provide electric service such as:

(a) Operation or maintenance of electric system infrastructure;

(b) Operation or maintenance of computer systems;

(c) Purchase of electricity for classes of customer service regulated by the commission; and

(d) Construction of electric system infrastructure.

(5) The requirements under this section may be satisfied in whole or in part by cross-reference to the applicable portions of other documents that the utility has on file with the commission.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-268, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-275 Actual results for Washington operations report.** Within sixty days of the end of each quarter, each electric utility must file a report of actual results for Washington operations. The results of operations report must contain each of the three monthly balances and the latest twelve months' ending balance for all accounts of the uniform system of accounts. The report must include the average customer count and total unit sales per customer class for each reported period.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-275, filed 2/28/05, effective 3/31/05.]

**WAC 480-100-282 Application for approval of lease of utility facilities.** Under the provisions of RCW 80.04.520, the applicant must certify that the requested approval of lease of utility facilities is necessary to exempt any owner of the facilities from being a public utility company under the Public Utility Holding Company Act of 1935.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-100-282, filed 8/5/05, effective 9/5/05.]

**WAC 480-100-287 Form of lease application.** A filing for approval of lease of utility facilities must be submitted in the following form:

**Before The Washington Utilities And Transportation Commission**

**In the Matter of  
the Application  
of (insert name)  
for an Order  
Approving the  
Lease of Utility  
Facilities.**

No. . . .  
(Number to be  
inserted by Com-  
mission)

Application is hereby made to the Washington Utilities and Transportation Commission for an order authorizing the lease of utility facilities. The following general information and exhibits are furnished in support:

**GENERAL INFORMATION**

1. Name of applicant.
2. Address of principal office of applicant.
3. Name and address of attorney or agent.
4. State or states under which applicant is organized and form of organization.
5. A general description of the property owned by applicant and the field of its operations.

**EXHIBIT "A"**

A statement by applicant certifying that the requested approval is necessary or appropriate to exempt any owner of the facilities from being a public utility company under the federal Public Utility Holding Company Act of 1935.

**EXHIBIT "B"**

Detailed unconsolidated balance sheet as of three months before the date the application is filed, and a pro forma balance sheet as of the same date showing the effect of the proposed lease. Indicate separately the amount of intangibles and the amount reflected in plant acquisition adjustment account if such items are included in the fixed capital or utility plant accounts of the balance sheet.

**EXHIBIT "B-1"**

(A) Detailed income and profit-and-loss statement for the twelve months ended as of the date of the balance sheet submitted as Exhibit "B."

(B) Reconciliation of the retained earnings account for the period covered by the income and profit-and-loss statement. Retained earnings should be segregated from other surplus accounts.

**EXHIBIT "C"**

1. A description of the property to be leased.
2. The historical or original cost of the property to be leased and the related accrued depreciation. (Estimated in both cases if actual amounts are not known.)
3. The amount of contributions in aid of construction.
4. Terms of the lease.

**EXHIBIT "D"**

Economic and financial justification for entering into the proposed lease including a lease versus purchase analysis.

**EXHIBIT "E"**

Show such other facts that may be pertinent to the application.

The undersigned applicant requests that the Washington Utilities and Transportation Commission enter an order granting this application.

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
(Applicant/Title)

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-100-287, filed 8/5/05, effective 9/5/05.]

**WAC 480-100-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, 2005.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA in Quincy, Massachusetts.

(4) The **American National Standard for Electric Meters: Code for Electricity Metering, ANSI C12.1** is published by the American National Standards Institute.

(a) The commission adopts the version published in 2001.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-100-999, filed 10/10/05, effective 11/10/05; 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-999, filed 2/28/05, effective 3/31/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-100-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-100-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-999, filed 5/3/01, effective 6/3/01.]

## Chapter 480-110 WAC WATER COMPANIES

### WAC

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480-110-565	Securities report.
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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

480-110-265	Tariffs. [Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-265, filed 11/30/99, effective 12/31/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-110-275	Accounting and reporting requirements, and regulatory fees. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 2003 c 296. 04-05-031 (Docket No. A-031232, General Order No. R-512), § 480-110-275, filed 2/11/04, effective 3/13/04. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-110-275, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-275, filed 11/30/99, effective 12/31/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-110-285	Securities, affiliated interest, transfer of property. [Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-285, filed 11/30/99, effective 12/31/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-110-295	Adopted and initial tariffs. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-110-295, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-295, filed 11/30/99, effective 12/31/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-110-475	Reports of accidents. [Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-475, filed 11/30/99, effective 12/31/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-110-495	Maps. [Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-495, filed 11/30/99, effective 12/31/99.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

**WAC 480-110-205 Application of rules.** The rules in this chapter apply to any water company that distributes, sells, or supplies water, and that meets requirements for commission regulation or jurisdiction under RCW 80.04.010 and WAC 480-110-255 (Jurisdiction). This includes investor-owned water companies that meet the jurisdictional threshold of serving one hundred or more customers or have average revenue of more than four hundred seventy-one dollars per customer per year.

[Statutory Authority: RCW 80.01.040, 80.04.160 and 80.04.010. 05-08-099 (Docket No. UW-040375, General Order No. R-519), § 480-110-205, filed 4/4/05, effective 5/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-205, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467,

Docket No. UW-980082), § 480-110-205, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-215 Exemptions from rules in chapter 480-110 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-215, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-110-215, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-215, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-225 Additional requirements. (1)** These rules do not relieve any company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any company in appropriate circumstances, consistent with the requirements of law.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-225, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-225, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-227 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-227, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-235 Definition of control. (1)** For purposes of determining commission jurisdiction over a water company as defined in RCW 80.04.010, "control" means the water system operator or manager has discretion over the property or finances or operations of a water company which is normally exercised by an owner. Factors indicating control include, but are not limited to, whether the operator or manager:

- (a) May authorize the purchase or sale of all or part of the water system or its water rights;
- (b) May authorize capital additions or improvements to the system;
- (c) May accept contributed plant;
- (d) May authorize the expenditure or acquisition of funds that encumber any asset of the company;
- (e) May authorize the expenditure of funds for nonwater company purposes;
- (f) Receives compensation of a type or amount having no reasonable relationship to the work performed or to be performed.

(2) Control does not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company.

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[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-235, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-235, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-245 Glossary. "Applicant"** means any person, partnership, firm, corporation, municipality, cooperative organization, governmental agency, etc., that has completed a water company's application for water service.

**"Commission"** means the Washington utilities and transportation commission.

**"Contributions in aid of construction"** means any money, services or property received by a water company to fund capital investments at no cost to the company with no obligation to repay.

**"Customer"** means:

- Anyone who has paid water company fees and/or has an accepted application for service; or
- Anyone whose service connection is installed and is currently paying a ready-to-serve charge; or
- Anyone who is actually receiving water service from the company with the knowledge of the company.

**"Extension"** means the water mains and equipment necessary to extend the company's transmission and distribution infrastructure. An extension may also be called a distribution extension, a main extension, or a line extension.

**"Facilities charge"** means a one-time fee that a new customer must pay, consistent with WAC 480-110-455 (Water company funding mechanisms), before the company will connect the customer's property to the water system.

**"Initial tariff"** means:

- The tariff filed by a water company when it first becomes subject to the jurisdiction of the commission; or
- The tariff filed by a water company that was formerly subject to commission jurisdiction, and has once again become jurisdictional. It does not mean a tariff filed to add a newly acquired system or company to the tariff of a currently jurisdictional company.

**"Jurisdictional customer"** means anyone who is actually receiving water service.

**"Potential customer"** means anyone to whom the water company has given a letter agreeing to provide service; and

- The letter is currently enforceable and has not expired by its own terms; and
- The property is not yet receiving any type of service.

**"Primary contaminants"** means substances that, when present in drinking water at levels exceeding designated maximum contaminant levels (MCL), may adversely affect the health of consumers. These MCLs are established as water quality "primary standards" and are based on chronic, non-acute, or acute human health effects.

**"Rate increase filing"** means any filing by the company that would:

- Increase gross annual revenues of the company from activities regulated by the commission; or
- Restructure tariffs so that one class of customer would provide more gross revenue than under the prior tariff structure. The term does not mean filings designed only to recover governmentally imposed taxes or periodic rate adjustments that have been authorized by commission order.

**"Ready-to-serve charge"** means the charge assessed by the water company when:

- The water company has the ability to provide water service;
- The water company has committed to provide water service; and
- There is an installed service connection at the customer's property.

**"Reconnect charge"** means the charge specified in the company's tariff for restoring water service that has been disconnected:

- At the customer's request; or
- For nonpayment; or
- For failure to comply with the company's rules.

**"Service area"** means the geographic area to which the company intends to provide water service using current plant.

**"Service connection"** means the pipes, valves, and fittings between the water company's distribution system and the customer's service line.

**"Standby charge"** means a charge imposed by some unregulated companies for having transmission and distribution infrastructure installed but without the current ability to provide water. It is also sometimes referred to as a system-readiness fee. The commission does not authorize this type of charge for regulated water companies.

**"Surcharge"** means a monthly charge or fee paid to the water company for plant or expenses. The surcharge is in addition to regular monthly service fees and typically has an expiration date or dollar limit and is subject to specific accounting requirements.

**"Water company"** or **"company"** means any corporation, company, association, joint stock association, partnership or person, their lessees, trustees or receivers appointed by any court whatever, owning, controlling, operating or managing any water plant within the state of Washington for the purpose of furnishing water service to the public for hire and subject to the jurisdiction of the commission. It does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company.

**"Water system"** means all plant, equipment, and other assets used to provide water service for a specific location.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-245, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-245, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-255 Jurisdiction.** (1) The commission only regulates investor-owned water companies that:

(a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite management agency is not an owner of the water company.

(b) Meet jurisdictional thresholds of one hundred or more customers, or have average revenue of more than four hundred seventy-one dollars per customer per year.

If a water company serves customers	and has average annual revenue per customer	commission regulation
99 or less	\$471 or less	No
99 or less	more than \$471	Yes
100 or more	\$471 or less	Yes
100 or more	more than \$471	Yes

(2) The commission does not regulate the following providers of water service:

- (a) Cities, towns, or counties.
- (b) Public utility districts.
- (c) Water districts.
- (d) Local improvement districts.
- (e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.
- (f) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than four hundred seventy-one dollars average annual revenue per nonmember.
- (g) Entities or persons that provide water only to their tenants as part of the business of renting or leasing.

This may include:

- (i) Apartment buildings.
- (ii) Mobile home parks.
- (iii) Manufactured home rental communities.
- (iv) Office complexes.
- (v) Commercial or industrial parks.

(3) To determine jurisdiction, the commission considers only those customers receiving water. The commission does not consider customers who do not receive water, such as customers who have paid:

- (a) Water-availability letter fees.
- (b) Standby charges.
- (c) System-readiness fees.
- (d) Ready-to-serve charges.

(4) To calculate the average annual revenue per customer, the commission considers only the charges that water-receiving customers are billed on a recurring basis, other than contributions in aid of construction. For example, this includes money billed for flat-rate service or the metered base-charge and all usage charges.

(a) The commission does not include charges billed to customers who do not receive water, such as:

- (i) Water availability letter fees.
- (ii) Standby charges.
- (iii) System-readiness fees.
- (iv) Ready-to-serve charges.

(b) The commission does not consider contributions in aid of construction in determining jurisdiction. These contributions can be money, services or property. Payments can be made in a lump sum or financed over time. Examples of contributions in aid of construction include payments for:

- (i) Connection to system.
- (ii) Meter installation.
- (iii) System buy-in.
- (iv) Facilities charges.
- (v) Assessments for capital plant and equipment.

(5) The following example shows how to calculate the average annual revenue per customer for two hypothetical customers. The data for each customer are provided at the end of the example:

(a) Select the most recent twelve consecutive months.

Example: February 2004 through January 2005.

(b) For each customer who received water service during the twelve-month period, add the amount the customer was billed by the water company for items other than contribution in aid of construction items.

Example: Customer A billed \$340.  
Customer B billed \$283.

(c) For each customer who received water service during the twelve-month period, add the number of months the customer received water service.

Example: Customer A received water service for twelve months.  
Customer B received water service for nine months.

(d) Total the amount billed the customers during the twelve-month period.

Example:

	Billed by the Water Company During the Twelve-Month Period
Customer A	\$340
Customer B	+ \$283
Total Billed During Twelve- Month Period	\$623

(e) Total the number of months each customer received water service.

Example:

	Number of Months Received Water Service During the Twelve-Month Period
Customer A	12
Customer B	+ 9
Total Months Received Water Service During the Twelve- Month Period	21

(f) Calculate the "Average Monthly Revenue Per Customer": Divide the "Total Billed During the Twelve-Month Period" by the "Total Months Received Water Service During the Twelve-Month Period."

Example:

Total Billed During the Twelve-Month Period	\$623
Total Months Received Water Service During the Twelve-Month Period	÷ 21
Average Monthly Revenue Per Customer	\$29.67

(g) Calculate the "Average Annual Revenue Per Customer": Multiply the "Average Monthly Revenue Per Customer" times 12 months.

(A)	Average Monthly Revenue Per Customer	\$29.67
	Months in a Year	x 12
(B)	Average Annual Revenue Per Customer	\$356.04

**DATA USED IN THE EXAMPLE TO CALCULATE  
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—  
Customer A**

		Standby Charge	Ready-to- Serve Charge	Connection Charge	Facilities Charge	Meter Base Charge	Meter Usage Charge	Total Billed
	<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes	
	<u>Contribution in</u>	No	No	Yes	Yes	No	No	
	<u>Aid of Construction</u>							
<u>Year</u>	<u>Month</u>							
2004	February					\$20	\$4	\$24
2004	March					\$20	\$5	\$25
2004	April					\$20	\$2	\$22
2004	May					\$25	\$5	\$30
2004	June					\$25	\$6	\$31
2004	July					\$25	\$12	\$37
2004	August					\$25	\$6	\$31
2004	September					\$25	\$4	\$29
2004	October					\$25	\$4	\$29
2004	November					\$25	\$3	\$28
2004	December					\$25	\$2	\$27
2005	January					\$25	\$2	\$27
		\$0	\$0	\$0	\$0	\$285	\$55	\$340



Number of months service	12	
Not Receiving Water		\$0
Receiving Water - Contribution in Aid of Construction		\$0
Receiving Water - Other than Contribution in Aid of Construction		<u>\$340</u>
Total customer billed during period		\$340

**DATA USED IN THE EXAMPLE TO CALCULATE  
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—  
Customer B**

		<u>Standby Charge</u>	<u>Ready-to- Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>	
<u>Receive Water Service</u>		No	No	Yes	Yes	Yes	Yes	
<u>Contribution in Aid of Construction</u>		No	No	Yes	Yes	No	No	
<u>Year</u>	<u>Month</u>							<u>Total Billed</u>
2004	February	\$7						\$7
2004	March	\$7						\$7
2004	April		\$12					\$12
2004	May			\$300	\$4,500	\$25	\$5	\$4,830
2004	June					\$25	\$4	\$29
2004	July					\$25	\$3	\$28
2004	August					\$25	\$12	\$37
2004	September					\$25	\$10	\$35
2004	October					\$25	\$15	\$40
2004	November					\$25	\$5	\$30
2004	December					\$25	\$2	\$27
2005	January					<u>\$25</u>	<u>\$2</u>	<u>\$27</u>
		\$14	\$12	\$300	\$4,500	\$225	\$58	\$5,109
Number of months service						9		
						Not Receiving Water		\$26
						Receiving Water - Contributions in Aid of Construction		\$4,800
						Receiving Water - Other than Contribution in Aid of Construction		<u>\$283</u>
						Total customer billed during period		\$5,109

(h) To ensure that all customers are treated equitably, the commission will impute the same rates to any customers receiving free or reduced service that apply to other customers receiving comparable service on the same system.

[Statutory Authority: RCW 80.01.040, 80.04.160 and 80.04.010. 05-08-099 (Docket No. UW-040375, General Order No. R-519), § 480-110-255, filed 4/4/05, effective 5/5/05. Statutory Authority: RCW 80.01.040. 00-17-135 (General Order No. R-473, Docket No. UW-991634), § 480-110-255, filed 8/21/00, effective 9/21/00; 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-255, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-261 Maps.** Each water company shall maintain a current map of each of its water systems showing the current service area. The company must provide the current maps to the commission for review within five business days of a request. The maps must contain enough detail to answer questions related to rates and charges and obligations to serve.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-261, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-335 Establishing credit and deposits.**

(1) **Establishing credit - residential.** A company may not collect a security deposit if an applicant for residential ser-

vice can establish satisfactory credit by any one of the following:

(a) The applicant had prior service with the company or another water company for twelve months before the application date and:

(i) Service was not disconnected for nonpayment;

(ii) The customer received no more than one delinquency notice; and

(iii) References with the other company (if applicable) can quickly and easily be checked. The company may request that the references from the previous company be in writing.

(b) The applicant had consecutive employment during the prior twelve months with no more than two employers and is currently employed or has a regular source of income.

(c) The applicant owns or has a legal interest in the premises being served.

(d) The applicant can furnish a satisfactory guarantor who will be responsible for payment of water service bills in the event of disconnection or default by the customer, in a specified amount, not to exceed the amount of the cash deposit required.

(e) The applicant personally produces at the company's business office two major credit cards, or other credit refer-

ences that the company can quickly and easily check, that demonstrate a satisfactory payment history.

(2) **Establishing credit - nonresidential.** A company may require an applicant for nonresidential water service to demonstrate that the applicant is a satisfactory credit risk by reasonable means appropriate under the circumstances.

(3) **Deposit requirements.** A company may require a deposit if:

(a) The applicant has failed to establish a satisfactory credit history as outlined in subsections (1) or (2) of this section;

(b) The applicant's service from another water company was disconnected for failure to pay amounts owing when due during the twelve months before the application date;

(c) The applicant has an unpaid, overdue balance owing for similar service from the water company to which application is being made or from any other water company;

(d) Two or more delinquency notices have been served on the applicant by any water company during the prior twelve months; or

(e) The application is for beginning or continuing service to a residence where a prior customer still lives and owes a past due bill to the company.

(4) **Deposit amount.** Deposits required for a customer or location must not exceed:

(a) Two-twelfths of the estimated annual billings for companies billing monthly;

(b) Three-twelfths of estimated annual billings for companies billing bimonthly;

(c) Four-twelfths of estimated annual billings for companies billing trimonthly.

(5) **Transfer of deposit.** When a customer moves to a new address within the company's service territory, the deposit plus accrued interest, less any outstanding past-due balance owing from the old address, must be transferred to the new address or refunded.

(6) **Interest on deposits.** Companies that collect customer deposits must pay interest on those deposits calculated:

(a) For each calendar year, at the rate for the one-year Treasury Constant Maturity as of November 15 of the previous year, as calculated by the U.S. Treasury, and published in the Federal Reserve's Statistical Release H.15; and

(b) From the date of deposit to the date of refund or when applied directly to the customer's account.

(7) **Deposit payment arrangements.** The company must allow an applicant or customer the option of paying fifty percent of the deposit prior to service, and paying the remaining balance in equal amounts over the next two months, on the dates mutually agreed upon between the applicant or customer and the company. The company and applicant or customer may make other mutually acceptable deposit payment arrangements.

(8) **Receipt for deposit.** A company must furnish a receipt to each applicant or customer for the amount deposited.

(9) **When refund of deposits is required.** A company must refund deposits plus accrued interest when there has been satisfactory payment, as defined in (a) of this subsection, or when service is terminated.

(a) "Satisfactory payment" means a customer has paid for service for twelve consecutive months in a prompt and satisfactory manner as evidenced by the following:

(i) The company has not started a disconnection process against the customer; and

(ii) The company has sent no more than two delinquency notices to the customer.

(b) Termination of service. When service is terminated, the company must return to the customer the deposit amount plus accrued interest, less any amounts due the company by the customer.

(10) **How deposits are refunded.** The company must refund any deposit plus accrued interest, as indicated by the customer at the time of deposit, or as modified by the customer on a later date, using one of the following methods:

(a) A check issued and mailed to the customer no later than fifteen days following completion of twelve months of satisfactory payment, as described above; or

(b) A credit applied to the customer's account for service beginning in the thirteenth month.

(11) **Additional deposit.** If a deposit or additional deposit amount is required after the service is established, the reasons must be specified to the customer in writing. Any request for a deposit or additional deposit amount must comply with the standards outlined in subsections (1) and (2) of this section. If the original deposit was secured by a guarantor and the guarantor does not agree to be responsible for the additional deposit amount, the customer will be held responsible for paying the additional deposit.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-335, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 02-21-066 (Docket No. A-020405, General Order No. R-504), § 480-110-335, filed 10/16/02, effective 1/1/03. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-335, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-355 Discontinuing of service. (1) Service may be disconnected either by customer direction or by company action:**

(a) **Customer-directed.** Customers wanting to discontinue service must notify the water company. The company must disconnect the service as requested by the customer. If the customer fails to request disconnection of service the customer will be responsible to continue paying for water service at the company's tariff rate until the company becomes aware that the customer vacated the property.

(b) **Company-directed: Notice requirements -** After properly notifying the customer, as explained in subsection (3) of this section, the water company may discontinue service to its customers for:

(i) Unpaid bills, as provided for in WAC 480-110-375 (Form of bills);

(ii) Water use for purposes or properties other than those specified in the customer's application for service;

(iii) Willful waste of water through improper or defective piping, equipment, or otherwise;

(iv) Piping or equipment that does not meet the company's standards or fails to comply with other applicable codes and regulations;

(v) Tampering with the company's property;

- (vi) Vacating the premises;
- (vii) Nonpayment of any proper charges, including deposit, as provided in the company's tariff;
- (viii) Refusing to allow access as required in WAC 480-110-305 (Access to premises);
- (ix) Violating rules, service agreements, or effective tariffs, including violation of outdoor watering instructions given to customers in order to curtail water use during time of shortage;
- (x) Use of equipment that detrimentally affects the company's service to its other customers.

(c) **Service obtained by fraud: No notice required before termination** - A water company may terminate service without notice when it discovers that a customer has obtained service fraudulently. Examples of fraud include: When service is connected without the company's knowledge, when service is obtained by fraudulent means or representations, or when service is used to provide service to other persons who are required to obtain their own service.

(i) **First offense:** The company may disconnect service immediately and without prior notice when it discovers fraud, unless the customer immediately pays:

- (A) The tariff rate for service that the company estimates was taken fraudulently; plus
- (B) All company costs resulting from the fraudulent use and all applicable fees; plus
- (C) Any applicable required deposit.

(ii) **Second offense:** The company may disconnect service immediately and without prior notice when it discovers further fraud. The company may refuse to reconnect service to a customer who has been disconnected for further fraud.

(iii) **Commission review:** A customer may ask the commission to review any company determination of fraud through an informal or formal complaint. The company has the burden of proving that fraud occurred. However, this rule does not relieve any person who has committed fraud from civil or criminal responsibility.

(2) **Medical emergencies.** When a water company has cause to disconnect or has disconnected a residential service, it must postpone disconnection of service or must reinstate service for a grace period of five business days after receiving either verbal or written notification of the existence of a medical emergency. In cases of actual emergencies when service is reinstated, payment of a reconnection charge and/or deposit shall not be required prior to reinstatement of service.

(a) The company may require that the customer, within five business days, submit written certification from a qualified medical professional stating that the disconnection of water service would significantly endanger the physical health of a resident of the household. "Qualified medical professional" means a licensed physician, nurse practitioner, or physician's assistant authorized to diagnose and treat the medical condition without supervision of a physician. Nothing in this section precludes a company from accepting other forms of certification, but the maximum the company can require is written certification. If the company requires written certification, it may require that the certification include some or all of the following information:

- (i) Residence location;
- (ii) An explanation of how the physical health of the person will be endangered by disconnection of local service;

(iii) A statement of how long the condition is expected to last; and

(iv) The title, signature and telephone number of the person certifying the condition.

(b) A medical emergency does not excuse a customer from paying delinquent and ongoing charges. The company may require that the customer do the following within the five business day grace period: Pay a minimum of twenty-five percent of the delinquent balance and enter into an agreement to pay the remaining delinquent balance within ninety days and to pay subsequent bills when due. Nothing in this section precludes the company from agreeing to an alternate payment plan, but the company may not require the customer to pay more than this subsection prescribes. The company must send a notice to the customer confirming the payment arrangements within two business days.

(c) If within the five-day grace period the customer fails to provide an acceptable payment arrangement, the company may disconnect service without further notice.

(d) If the customer fails to abide by the terms of the payment agreement the company may disconnect service without further notice.

(e) The medical certification is valid only for the length of time the health endangerment is certified to exist but no longer than six months unless renewed.

(3) **Required notice prior to disconnecting service.** Each water company must notify customers before disconnecting their service except in case of danger to life or property, fraudulent use, impairment of service, or violation of law. In all other cases, the company must not disconnect service until it has met the following requirements:

(a) The company must serve a written disconnection notice on the customer, either by mail, or, at the company's option, by personal delivery of the notice to the customer's address, attached to the primary door. Each disconnection notice must include:

(i) A delinquent date that is no less than eight business days after the date of personal delivery or mailing if mailed from inside the state of Washington or a delinquent date that is no less than eleven days if mailed from outside of the state of Washington; and

(ii) All pertinent information about the reason for the disconnection notice and how to correct the problem; and

(iii) The company's name, address, and telephone number by which a customer may contact the company to discuss the pending disconnection of service.

(b) In addition to (a) of this subsection, a second notice must be provided by one of the two options listed below:

(i) **Delivered notice.** The company must deliver a second notice to the customer and attach it to the customer's primary door. The notice must contain a deadline for compliance that is no less than twenty-four hours after the time of delivery that allows the customer until 5:00 p.m. of the following day to comply; or

(ii) **Mailed notice.** The company must mail a second notice, which must include a deadline for compliance that is no less than three business days after the date of mailing if mailed from within the state of Washington or six days if mailed outside the state of Washington.

(c) Disconnection notices must:

(i) Include detailed information pertinent to the situation; and

(ii) Include the company's name, address and telephone number by which the customer may contact the company to discuss the pending disconnection of service; and

(iii) Expire after ten business days from the first day that the company may disconnect service, unless other mutually agreed upon arrangements have been made and confirmed in writing by the company. If mutually accepted arrangements are not kept, the company may disconnect service without further notice.

(d) Except in case of danger to life or property, companies may not disconnect service on Saturdays, Sundays, legal holidays, or on any other day on which the company cannot reestablish service on the same or following day.

(e) A company employee dispatched to disconnect service must accept payment of a delinquent account at the service address if tendered in cash, but is not required to give change for cash tendered in excess of the amount due and owing. The company must credit any excess payment to the customer's account. When disconnection does not take place due to payment made by the customer, the company may assess a fee for the disconnection visit to the service address as provided in the company's tariff. The disconnection notice must describe the disconnection visit charge, the amount, and the circumstances under which the charge will be made.

(f) When service is provided through a master meter, or when the utility has reasonable grounds to believe service is to other than the customer of record, the company must undertake reasonable efforts to inform occupants of the service address of the impending disconnection. Upon request of one or more service users, where service is to other than the customer of record, a minimum period of five days must be allowed to permit the service users to arrange for continued service.

(g) When service is provided to a hospital, medical clinic with resident patients, or nursing home, notice of pending disconnection must be provided to the director of the Washington department of health, and to the customer. Upon request to the company from the Washington department of health director or designee, an additional five business days must be allowed before disconnecting service to allow the department to take whatever steps are necessary to protect the interests of resident patients who are responsibilities of the Washington department of health.

(h) Service may not be disconnected while the customer is pursuing any remedy or appeal provided by these rules or while engaged in discussions with the company's representatives or with the commission. However, any amounts not in dispute must be paid when due and any conditions posing a danger to health, safety, or property must be corrected.

(4) **Payments at a payment agency.** Payment of any past due amounts to a designated payment agency of the water company constitutes payment when the customer informs the company of the payment and the company has verified the payment with the payment agency.

(5) **Reconnecting water service after disconnection.** The water company must restore disconnected service when the customer has paid, or the company has agreed to bill, any reconnection charge and:

(a) The causes of disconnection are removed; or

(b) The customer pays all proper charges; or

(c) The customer pays any applicable deposit as provided for in the company tariff in accordance with WAC 480-110-335 (Establishing credit and deposits).

The commission may order reconnection pending resolution of any bona fide dispute between the company and the customer over the propriety of disconnection.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-355, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-355, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-365 Service responsibilities.** (1) **Customer responsibility** - Customers must notify the water company in writing prior to making a change in equipment or usage that will materially affect the service being provided by the company. The customer must:

(a) Provide the company adequate time to install necessary additional facilities or supply; and

(b) Pay an equitable share of the cost of necessary additional facilities, if any, as provided in the company's tariff or through a contract submitted to the commission for approval.

(2) **Water company responsibility.** Each water company must:

(a) Install and maintain all equipment at appropriate locations necessary to operate the system;

(b) Install additional equipment as required by the commission in connection with performing special investigations; and

(c) Notify all affected customers when changes to the service will require customers to adjust their equipment.

(i) If the customer has been advised of the needed change prior to taking service, the company has no obligation to pay for any costs in connection with making required changes to the customer's equipment.

(ii) If the change in service is required by law, the company has no obligation to pay for any costs in connection with making required changes to the customer's equipment.

(iii) Otherwise when equipment must be adjusted to permit use under the changed conditions, the cost of any necessary adjustments must be equitably shared by the company and customer.

(3) **Maintenance.** Each water company must maintain its plant and system in a condition that enables it to furnish adequate service and meet its obligation under chapter 246-290 WAC, Public water supplies or chapter 246-291 WAC, Group B public water systems, as applicable.

(4) **Quality of water.** Each water company must meet Washington department of health requirements under chapter 246-290 or 246-291 WAC, as applicable.

(5) **Protection of water supply.** Each water company must protect its sources of supply, as required by Washington department of health under chapter 246-290 or 246-291 WAC, as applicable.

(6) **Operations and maintenance.** Each water company must comply with Washington department of health rules regarding operation and maintenance, as required under chapter 246-290 or 246-291 WAC as applicable, and by good engineering practices.

(7) **Test records.** Each water company must:

(a) Keep a complete record of each test made for quality and service conditions as required under these rules. The records must contain complete information concerning the test, including such items as the commission may require;

(b) Provide the records to the commission staff upon request.

(8) **Interruption of service and service outages:**

(a) Each water company must make all reasonable efforts to avoid outage of service but are not insurers in the event of emergency, acts of God, or similar event. When outages do occur, the company must make reasonable efforts to reestablish service with a minimum of delay.

(b) When making necessary repairs or changes to its facilities, a water company:

(i) May interrupt service for a period of time as reasonably necessary and in a manner that minimizes the inconvenience to the customers; and

(ii) Must attempt to do the work during working hours regularly maintained by the company.

(c) A water company may interrupt service without incurring any liability.

(9) **Notice of service interruptions.** Each water company must:

(a) Notify its customers of a scheduled interruption twenty-four hours in advance through newspapers, radio announcements, or other means;

(b) Notify police and fire departments affected by the interruption individually;

(c) Keep a record of all interruptions of service affecting a substantial number of customers, including in such records:

(i) The location;

(ii) The date and time;

(iii) The duration; and

(iv) The cause of each interruption, if known.

(d) Provide copies of records to the commission staff, upon request;

(e) Notify the Washington department of health.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-365, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-365, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-375 Form of bills.** (1) Customer bills must:

(a) Be issued at intervals not to exceed three months and identify if the water company is billing in arrears or advance;

(b) Show a reference to the applicable rate schedule;

(c) Identify and show each separate charge as a line item;

(d) Show the total amount of the bill;

(e) Include enough information that, together with tariff rates, the customer can calculate his or her bill (a copy of the tariff is available for review at company or from the commission upon request);

(f) Show the date the bill becomes delinquent if not paid. The minimum specified time must be fifteen days after the bill's mailing date, if mailed from within the state of Washington, or eighteen days if mailed from outside the state of Washington, after the bill's mailing date.

A customer may request to pay by a certain date that is not the normally designated payment date when showing good cause. Good cause may include, but is not limited to, adjustment of a billing cycle to parallel receipt of income. The preferred payment date must be prior to the next invoice date.

(g) Include the water company's name, business address, and telephone number and/or emergency telephone number by which a customer may contact the company;

(h) If the customer is metered, include the current and previous meter readings, the current read date, and the number and kind of units consumed;

(i) Show taxes and any tax percentage rate that the taxes are computed from. Taxes must be totaled to show a total taxed amount. Upon request, the company must provide a detail of the computation of the tax amount. Taxes, as used here, represent municipal occupation, business and excise taxes that have been levied by a municipality against the company, and are being passed on to the customer as a part of the charge for water service; and

(j) Clearly identify when a bill has been estimated.

(2) Each water company may prorate bills for customers who have taken service for a fraction of the billing period. If the company does not have its method of prorating bills in its tariff, the company must prorate bills in the following manner:

(a) For flat rate service, the charge must be prorated on the basis of the proportionate part of the period during which service was rendered.

(b) For metered service the charge will be equal to:

(i) The applicable minimum charge as shown in the company's tariff must be prorated on the basis of the proportionate part of the period during which service was rendered; plus

(ii) Any water usage charge computed using rates and allowances shown in the company's tariff.

(3) The water company must include its method for estimating bills in its tariff. Estimating of bills is allowed for no more than two consecutive billing cycles.

(4) When a company has cause to back-bill a customer, the company must allow the customer payment arrangements, if requested, for the same number of months to pay equal to the cumulative total of months being back-billed. (Example: If the company is back-billing for a one-year period, the company must allow the customer twelve months of equal payments to pay the total amount of the back billing.) These payments will be in addition to current billings.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-375, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-375, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-385 Water company responsibility for complaints and disputes.** (1) If a water company receives a complaint or dispute from a customer or an applicant for service it must:

(a) Acknowledge the complaint;

(b) Investigate promptly;

(c) Report the results of the investigation to the complainant;

(d) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(e) Inform the complainant that the decision may be appealed to a higher level representative at the company, if any;

(f) Inform the complainant, if still dissatisfied after speaking with the higher level representative, of the commission's availability for review of the complaint; and

(g) Provide the complainant with the commission's address and toll-free telephone number.

(2) Applicants, customers, or their representatives, may file with the commission:

(a) An informal complaint against the company as set forth in WAC 480-07-910 (Informal complaints); and/or

(b) A formal complaint against the company as set forth in WAC 480-07-370 (Pleadings—General).

(3) When commission consumer affairs staff refers an informal complaint to the company, the company must:

(a) Investigate and report the results to the commission consumer affairs staff within two business days. The commission consumer affairs staff may grant an extension of time for responding to the complaint, if requested and warranted;

(b) Keep the commission consumer affairs staff informed of progress toward the solution and the final result.

(4) Each water company must keep a record of all complaints concerning service or rates for at least one year and, on request, make them readily available for commission review. The record must contain:

(a) Complainant's name and address;

(b) Date and nature of the complaint;

(c) Action taken; and

(d) Final result.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-385, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-110-385, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-385, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-395 Water quality refunds.** (1) Each water company may be required to refund water charges due to poor water quality only:

(a) Upon commission order resulting from a formal proceeding before the commission; and

(b) When there are violations of the Washington department of health water quality standards in WAC 246-290-310 (Maximum contaminant levels (MCLs) and maximum residual disinfectant levels (MRDLs)); and

(c) If the company does not take follow up steps outlined in WAC 246-290-320 (Follow-up action).

(2) The amount of the refund will be determined in a formal proceeding before the commission and is not recoverable through rates or charges.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-395, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-395, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-415 Meters. (1) Water company rights and responsibilities:**

(a) Each water company must:

(i) Bear the cost of the meter and meter installation.

(ii) Install water meters that are in working order and accurately measure water flow.

(iii) Record meter serial numbers and identify location of installation.

(iv) Repair or replace a malfunctioning meter at its expense unless a customer causes the malfunction.

(b) The water company may:

(i) Install meters and charge the tariff meter rate after thirty days notice to affected customers.

(ii) Install any apparatus to detect fraud or waste without notifying the customer.

**(2) Water customer rights and responsibilities:**

(a) A customer may request that a standard residential meter as defined in the company's tariff be installed, provided that metered rates are in effect.

(b) When a customer requests a meter installation, the water company may charge the customer in advance for the meter cost and meter installation, if such charge is included in the company's tariff. The company must reimburse the customer, by bill credit, at least ten percent of the meter and installation charge each month until fully paid.

(c) The water company has thirty days from the date of request to install the meter.

(d) If the water company fails to install the meter within the time limit in (c) of this subsection, the customer must be charged only the meter minimum charge until the meter is installed.

(e) If a customer tampers with a meter, the customer will be liable to the company for any repair or replacement costs.

(f) If the customer requests assistance in reading a meter, the water company must provide information on how to read the meter.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-415, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-415, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-425 Water company customer notice requirements.** (1) Each water company must submit a draft customer notice to the commission for review at least one week before the company's planned printing date for distribution.

(2) At a minimum, the water company must notify:

(a) Customers and potential customers who may be affected by the water company's proposal; and

(b) The public affairs section of the commission.

(3) Customers must receive notice thirty days before the requested effective date when a water company proposes to:

(a) Increase rates;

(b) Change terms and/or conditions of an existing service;

(c) Change the ownership or control of the operating company (see WAC 480-143-210 (Transfer customer notice requirements) for content of notice);

(d) Institute a charge for a service that was formerly provided without charge; or

(e) Eliminate or grandfather any service.

(4) Content of notice for rate change - The notice to customers must contain, at a minimum, the following:

#### IMPORTANT NOTICE

(a) Date

(b) (Insert water company name) has filed for approval from the Washington utilities and transportation commission to increase rates (insert total annual revenue). If approved, the rates will be effective on (insert effective date).

(c) (Clearly explain the reason for the proposal - be specific.)

Current Rates/Services	Proposed Rates
\$	\$

(d) If you have questions about the proposed filing and how it will affect you, please call (insert company name & office phone number). If you have questions about the rate making process, you may contact the Washington Utilities and Transportation Commission at the following address: WUTC, 1300 S. Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250; 1-800-562-6150 (toll-free) or by e-mail comments@wutc.wa.gov.

(e) If you would like to comment on this proposal, it is important for you to do so now. Comments must be submitted in writing or presented at the commission's open meeting to be included as part of the formal record. The commission is interested in receiving your views regarding this proposal whether in favor or not. All open meetings are held in Olympia, WA. If you would like to be added to the commission's mailing list to be notified of the open meeting date, please call 1-800-562-6150 and leave your name, complete mailing address, the water company's name, and a description of the proposal you are interested in.

Sincerely,  
(Company Name/Representative)

(5) Notice after commission action is permitted only when the commission approves an increase in federal, state, county or city-imposed taxes, fees or surcharges, and when credits are issued.

(a) At a minimum, notice after commission action must include the effective date, a clear description of changes to rates or services resulting from the commission's decision, and a company contact number where customers may seek additional information.

(b) Any notice after commission action may be accomplished by a bill message, bill insert, printed in a company newsletter, or mailed separately to customers.

(c) The commission may require other notification to the public as it determines necessary.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-425, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-425, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-431 Tariffs.** Tariffs filed by a water company must conform to the rules of this section and chap-

ter 480-80 WAC Utilities general—Tariffs, unless the commission has authorized deviation from the rules in writing.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-431, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-433 Adopted and initial tariffs.** A water company must file revisions to its filed tariff within thirty days of its acquisition of new service area, whether by acquisition of another regulated water company or by acquiring one or more previously unregulated water systems.

(1) **Adopted tariffs - when a regulated company acquires another regulated company.** Any regulated water company acquiring a regulated water company must adopt the latter's tariff. An adoption form must be completed and filed with the commission by the acquiring water company within thirty days of the acquisition. The commission will supply an adoption form upon request.

(2) **Incorporate into existing tariff - when a regulated water company acquires a nonregulated company.**

(a) When a regulated water company acquires a nonregulated water company or water system, the acquiring water company must file a separate tariff page indicating the name of the newly acquired company or system with the rates and charges that were in existence before the acquisition.

(b) If the acquired nonregulated company or water system was previously subject to commission jurisdiction, the acquiring water company must file a separate tariff page indicating the name of the newly acquired company or system with the rates and charges in effect for the acquired company at the time the acquired company was removed from regulation.

(c) No other rates and charges may apply to the customers on the newly acquired system except those specifically shown on the new tariff page unless the company obtains the commission's approval to charge a different rate.

(3) **Initial tariffs - when a company becomes jurisdictional.**

(a) An initial tariff must be filed in a standard tariff format. The commission will provide illustrations of the standard format upon request.

(b) The tariff must be accompanied by a cover letter describing the filing as an initial tariff.

(c) Customers must be notified before the commission receives the filing.

(d) The filing must be accompanied by supporting financial data justifying the proposed rates. See WAC 480-07-530 (General rate proceedings—Water companies).

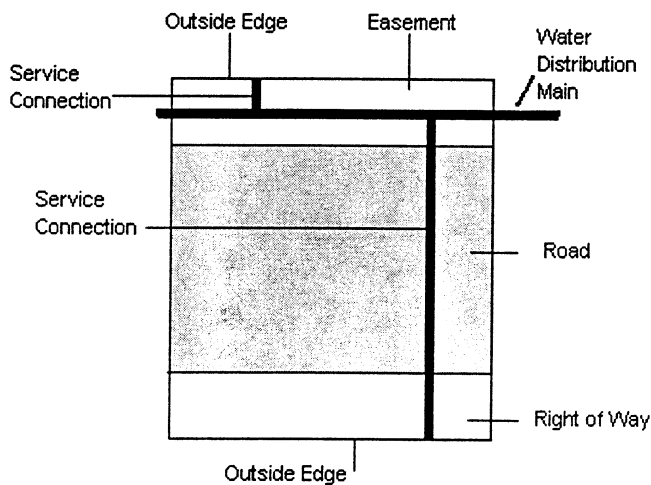
(4) **Initial tariffs - a company that was previously subject to commission jurisdiction.** If a company or water system was previously subject to commission jurisdiction and once again becomes jurisdictional, the company must file a tariff with the rates and charges in effect at the time the company was last removed from regulation.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-433, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-445 Service connections and customer service lines.** A service connection is the pipes, valves, and fittings between the water company's distribution system and

the customer's service line. The customer's service line is the water line from the customer's points of usage to the water company's service connection.

(1) **Service connection charge and service connection length.** The length of a service connection can vary depending on where the customer's service line is or will be located. A tariffed service connection charge may be assessed for the cost of a new service connection. However, if the service connection is longer than the distance from the water distribution main to the outside edge of the right of way or easement that runs along or parallel to the water distribution main and closest to the customer's property line, the cost of such an extension may be financed as line extension, at the option of the company. The related line extension contract is subject to approval by the commission under WAC 480-110-435 (Extension contracts).



(2) Service connections may be installed when the system is built or at a later date, after the system is operational. A service connection charge may be based on the average installation cost for new service connections in subsection (3)(a) and (b) of this section. The service connection must be owned and maintained by the water company.

(3) A water company may assess a service connection charge, if named in its tariff, to recover the cost of the service connection:

(a) Installed by the water company during construction of the water system; or

(b) Installed after the distribution system had been buried and in service; or

(c) When the service connection has been previously removed for good cause and must be reinstalled to provide water service.

(4) A service connection charge must not be assessed if:

(a) The water company did not incur any cost to install the service connection (e.g., the service connection is a contribution in aid of construction);

(b) The water company is just installing a meter; or

(c) The water company is merely opening a valve to connect the company's distribution system to the customer's service line.

(5) The company may install the service connection to the property line, property corner, or to a location on the property mutually agreed upon. The company may install a

meter or valve at any point along the service connection line or at a different mutually agreed location provided that in such event the property line will nevertheless be deemed the point of delivery.

(6) The customer's service line must be installed to provide easy access to the water company's distribution system. If there is doubt as to where the proper location should be, the customer must consult with the water company and agree on a location.

(7) The water company may request that the trench be left open and customer's service line exposed in order to inspect the connection for potential problems. The water company must complete the inspection within two business days after notification that the trench is open.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-445, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-445, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-456 Definitions.** The definitions in this section apply to Part IV of this chapter.

**"Affiliated interest"** means a person or corporation as defined in RCW 80.16.010.

**"Business day"** means the same as defined in WAC 480-07-120 (Office hours).

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Investment grade"** means a water company whose corporate credit/issuer rating is in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc.

**"Subsidiary"** means any company in which the water company owns directly or indirectly five percent or more of the voting securities, unless the water company demonstrates it does not have control.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-456, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-457 Filing information.** (1) **Filing.** The commission records center will accept any filing under WAC 480-110-525 (Issuing securities) delivered in person, by mail, telefacsimile, or electronic mail message. The commission records center will accept all other reports required in Part IV in person, by mail, or when procedures are in place, electronic mail message.

(2) **Commission may require additional information.** The commission may require pertinent information in addition to that specified by statute or in this chapter.

(3) **Information by reference.** When any information required to support a filing is on file with the commission, it is sufficient to make specific reference to the information indicating the proceeding, report, or other filing that contains the referenced information.

(4) **When information is unavailable.** If any required information is unavailable at the time of the filing, the filing must include the reason why the information is not available and state when it will be available.



[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-110-457, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-457, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-459 Additional reports.** Part IV does not supersede any reporting requirement specified in a commission order or limit the commission's ability to request additional information.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-459, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-465 Expenditures for political or legislative activities.** (1) The commission will not allow either direct or indirect expenditures for political or legislative activities for ratemaking purposes.

(2) For purposes of this rule, political or legislative activities include, but are not limited to:

(a) Encouraging support or opposition to ballot measures, legislation, candidates for a public office, or current public office holders;

(b) Soliciting support for or contributing to political action committees;

(c) Gathering data for mailing lists that are generated for the purposes of encouraging support for or opposition to ballot measures, legislation, candidates for public office, or current office holders, or encouraging support for or contributions to political action committees;

(d) Soliciting contributions or recruiting volunteers to assist in the activities set forth in (a) through (c) of this subsection.

(3) Political or legislative activities do not include activities directly related to appearances before regulatory or local governmental bodies necessary for the utility's operations.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-465, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-465, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-485 Retaining and preserving records and reports.** (1) The water company must retain all records and reports for three years unless otherwise specified in subsection (2) of this section.

(2) The *Regulations to Govern the Preservation of Records of Electric, Gas and Water Companies*, published by the National Association of Regulatory Utility Commissioners is prescribed as the requirement for the state of Washington. Information about the *Regulations to Govern the Preservation of Records of Electric, Gas and Water Companies* regarding the version adopted and where to obtain it is set out in WAC 480-110-999, Adoption by reference.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-485, filed 2/28/05, effective 3/31/05; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-110-485, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-485, filed 11/30/99, effective 12/31/99.]

**WAC 480-110-505 Accounting and reporting requirements and regulatory fees.** (1) Water companies must use the uniform system of accounts (USOA) published by the National Association of Regulatory Utility Commissioners (NARUC). Information about the USOA regarding the version adopted and where to obtain it is set out in WAC 480-110-999 (Adoption by reference). The USOA sets out the accounting requirements for Class A, B, and C water companies.

Water companies are classified by revenues.

Class	Annual Gross Operating Revenue
A	\$1,000,000 or more
B	\$200,000 to \$999,999
C	Less than \$200,000

(2) A water company may use the accounting requirements for a higher class if it chooses.

(3) The commission will distribute an annual report form that each water company must complete and file with the commission for the prior calendar year. The annual report must be filed, and the company's regulatory fee paid, no later than May 1 of each year.

(4) A written request for the extension of the time for filing the annual report can be made prior to May 1. The commission does not grant an extension of time for payment of regulatory fees.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-505, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-515 Reports of accidents.** Each water company must notify the commission within seventy-two hours after every accident resulting in death or serious injury to any person occurring in its plant or through contact with its facilities. At a minimum, the report must include the name of the injured person, time and place of the accident, and an explanation of the accident. The water company may notify the commission by phone, but must provide a written report within five business days.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-515, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-525 Issuing securities.** (1) Before a water company issues stocks, stock certificates, other evidence of interest or ownership, bonds, notes other than those notes exempted from reporting under RCW 80.08.043, or other evidences of indebtedness, or assumes any obligation or liability as guarantor subject to reporting under RCW 80.08.130, it must file with the commission:

(a) A description of the purposes for which the issuance will be made, including a certification by an officer authorized to do so, that the proceeds from any such financing is for one or more of the purposes allowed by RCW 80.08.030;

(b) A description of the proposed issuance, including the terms of financing; and

(c) A statement as to why the transaction is in the public interest.

(2) A commission order is not required for such a filing. The company may request a written order affirming that the company has complied with the requirements of RCW

80.08.040. The company must submit the request for a commission order, along with the information required in subsection (1) of this section, at least fifteen business days before the requested effective date for the order. Requests for supplemental orders may be exempt from the fifteen business day requirement.

(3) Filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute undertaking the issuance of a security, and therefore a filing with the commission is not required under the provisions of RCW 80.08.040. A shelf registration filing is defined under the General Rules and Regulations promulgated under the Securities Act of 1933, Rule 415 - Delayed or Continuous Offering and Sale of Securities.

(4) An authorized representative must sign and date the filing and include a certification or declaration that the information is true and correct under penalty of perjury as set forth in chapter 9A.72 RCW. The certificate or declaration must be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

(5) Filings under this section may be submitted with portions designated confidential pursuant to WAC 480-07-160 (Confidential information).

(6) Within sixty days after the issuance of any securities, except for dividend reinvestment and employee benefit plans, a company must file with the commission a verified statement:

(a) Outlining the final terms and conditions of the transaction; and

(b) Setting forth actual proceeds from the issuance and, to the extent known, the disposition of proceeds stating the final amount to be used for each purpose allowed by RCW 80.08.030.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-110-525, filed 8/5/05, effective 9/5/05.]

**WAC 480-110-535 Transferring cash or assuming obligations.** (1) At least five business days before a water company that is not rated investment grade or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

(a) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(b) When the threshold in (a) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities;

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court; or

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the company and its subsidiary or affiliate.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-535, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-545 Affiliated interests—Contracts or arrangements.** Prior to the effective date of any contract or arrangement described in RCW 80.16.020, each water company must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except for transactions provided at tariff rates, with any affiliated interest. Prior to the effective date of any modification or amendment, the company must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract or arrangement is unwritten, the company must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the company has failed to prove that it is reasonable and consistent with the public interest.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-545, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-555 Transfers of property.** Before selling, leasing, or assigning any of its property or facilities which are necessary or useful in the performance of its duties to the public, or before acquiring property or facilities of another public utility, a water company must obtain from the commission an order authorizing such transaction in accordance with chapters 80.12 RCW (Transfers of property) and 480-143 WAC (Commission general—Transfers of property).

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-110-555, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-555, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-565 Securities report.** Each water company that has issued securities must file with the commission an annual securities transaction report. The report is due ninety days from the end of the company's reporting period, whether a fiscal or calendar year. At a minimum, the report must contain:

(1) A schedule of the securities issued during the reporting period including a detailed description of the final agreements;

(2) A description of the use of proceeds stating the amounts used for each purpose allowed by RCW 80.08.030;

(3) The level of expenses for each of the securities transactions for the reporting period;

(4) A schedule of securities retired, refunded, repurchased, or otherwise removed from the company's capitalization; and

(5) A schedule of securities scheduled to mature in the fiscal or calendar year following the reporting period.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-110-565, filed 8/5/05, effective 9/5/05.]

**WAC 480-110-575 Affiliated interest and subsidiary transactions report.** (1) Each Class A water company must file an annual report summarizing all transactions, except for transactions provided at tariff rates, that occurred between the company and its affiliated interests, and the company and its subsidiaries. The report is due one hundred twenty days from the end of the company's reporting period, whether a fiscal or calendar year. The report must include a corporate organization chart of the company and its affiliated interests and subsidiaries.

(2) When total transactions with an affiliated interest or a subsidiary are less than twenty-five thousand dollars for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total transactions with an affiliated interest or subsidiary equal or exceed twenty-five thousand dollars for the reporting period, the company must provide:

(a) A balance sheet and income statement for such affiliated interest;

(b) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and

(g) A list of all common officers and directors between the water company and each such affiliated interest or subsidiary, along with their titles in each organization.

(3) The report required in this section supersedes the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(4) The company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in

WAC 480-110-545 (Affiliated interests—Contracts and arrangements).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-575, filed 2/28/05, effective 3/31/05.]

**WAC 480-110-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The **Uniform System of Accounts for Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1996.

(b) This publication is referenced in WAC 480-110-505 (Accounting, and reporting requirements and regulatory fees).

(c) The *Uniform System of Account for Water Utilities* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-110-485 (Retaining and preserving records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-999, filed 2/28/05, effective 3/31/05; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-110-999, filed 8/26/02, effective 9/26/02.]

## Chapter 480-120 WAC TELEPHONE COMPANIES

### WAC

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480-120-203	Use of customer proprietary network information (CPNI) not permitted to identify or track customer calls to competing service providers. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-203, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-120-214	Duration of customer approval or disapproval. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-214, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-120-204	Opt-in approval required for use, disclosure, or access to customer I-CPNI. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-204, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-120-215	Safeguards required for I-CPNI. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-215, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-120-205	Using customer proprietary network information (CPNI) in the provision of services. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-205, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-120-216	Disclosing CPNI on request of customer. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-216, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-120-206	Using individual customer proprietary network information (I-CPNI) during inbound and outbound telemarketing calls. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-206, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-120-301	Accounting requirements for competitively classified companies. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-301, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
480-120-207	Use of private account information (PAI) by company or associated companies requires opt-out approval. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-207, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-120-302	Accounting requirements for companies not classified as competitive. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-302, filed 12/12/02, effective 7/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-120-208	Use of customers' private account information (PAI) to market company products and services without customer approval. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-23-004 (General Order No. R-505, Docket No. UT-990146), § 480-120-208, filed 11/7/02, effective 1/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-120-303	Reporting requirements for competitively classified companies. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 2003 c 296. 04-05-031 (Docket No. A-031232, General Order No. R-512), § 480-120-303, filed 2/11/04, effective 3/13/04. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-303, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

- 480-120-304 Reporting requirements for companies not classified as competitive. [Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 2003 c 296. 04-05-031 (Docket No. A-031232, General Order No. R-512), § 480-120-304, filed 2/11/04, effective 3/13/04. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-304, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
- 480-120-305 Streamlined filing requirements for Class B telecommunications company rate increases. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-305, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-305, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
- 480-120-311 Access charge and universal service reporting. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-311, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
- 480-120-321 Expenditures for political or legislative activities. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-321, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.
- 480-120-322 Retaining and preserving records and reports. [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-322, filed 12/12/02, effective 7/1/03.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-120-323 Washington Exchange Carrier Association (WECA). [Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-323, filed 12/12/02, effective 7/1/03.] Repealed by 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353.

**WAC 480-120-015 Exemptions from rules in chapter 480-120 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-015, filed 2/28/05, effective 3/31/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-015, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-015, filed 12/12/02, effective 7/1/03; 01-15-022 (Docket No. UT-990146, General Order No. R-480), § 480-120-015, filed 7/11/01, effective 8/11/01.]

**WAC 480-120-021 Definitions.** The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

**"Access charge"** means a rate charged by a local exchange company to an interexchange company for the

origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

**"Access line"** means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

**"Affiliate"** means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

**"Ancillary services"** means all local service features excluding basic service.

**"Applicant"** means any person applying to a telecommunications company for new service or reconnection of discontinued service.

**"Average busy hour"** means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

**"Basic service"** means service that includes the following:

- Single-party service;
- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

**"Business"** means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

**"Business days"** means days of the week excluding Saturdays, Sundays, and official state holidays.

**"Business office"** means an office or service center provided and maintained by a company.

**"Business service"** means service other than residential service.

**"Busy season"** means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

**"Call aggregator"** means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

**"Category of service"** means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

**"Central office"** means a company facility that houses the switching and trunking equipment serving a defined area.

**"Centrex"** means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

**"Class A company"** means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

**"Class B company"** means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class B company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

**"Commercial mobile radio service (CMRS)"** means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

**"Commission (agency)"** in a context meaning a state agency, means the Washington utilities and transportation commission.

**"Company"** means any telecommunications company as defined in RCW 80.04.010.

**"Competitively classified company"** means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

**"Customer"** means a person to whom the company is currently providing service.

**"Customer premises equipment (CPE)"** is equipment located on the customer side of the SNI (other than a company) and used to originate, route, or terminate telecommunications.

**"Discontinue; discontinuation; discontinued"** means the termination or any restriction of service to a customer.

**"Drop facilities"** means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

**"Due date"** means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

**"Emergency response facility"** means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

**"Exchange"** means a geographic area established by a company for telecommunications service within that area.

**"Extended area service (EAS)"** means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

**"Facility or facilities"** means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

**"Force majeure"** means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emer-

gency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

**"Interexchange"** means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

**"Interexchange company"** means a company, or division thereof, that provides long distance (toll) service.

**"Interoffice facilities"** means facilities connecting two or more telephone switching centers.

**"InterLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

**"IntraLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

**"Local access and transport area (LATA)"** means a local access transport area as defined by the commission in conformance with applicable federal law.

**"Local calling area"** means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

**"Local exchange company (LEC)"** means a company providing local exchange telecommunications service.

**"Major outages"** means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

**"Missed commitment"** means orders for exchange access lines for which the company does not provide service by the due date.

**"Order date"** means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs, price lists, or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff or price list. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff or price list, a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff or price list.

**"Pay phone"** or **"pay telephone"** means any telephone made available to the public on a fee-per-call basis indepen-

dent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

**"Pay phone services"** means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

**"Pay phone service provider (PSP)"** means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

**"Payment agency"** means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

**"Person"** means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

**"Prior obligation"** means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

**"Proprietary"** means owned by a particular person.

**"Provision"** means supplying telecommunications service to a customer.

**"Public access line (PAL)"** means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

**"Public safety answering point (PSAP)"** means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

**"Residential service"** means basic service to a household.

**"Restricted basic service"** means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

**"Results of operations"** means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

**"Service interruption"** means a loss of or impairment of service that is not due to, and is not, a major outage.

**"Service provider"** means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

**"Special circuit"** means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

**"Standard network interface (SNI)"** means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point

is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

**"Station"** means a telephone instrument installed for a customer to use for toll and exchange service.

**"Subscriber list information (SLI)"** means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

**"Support structure"** means the trench, pole, or conduit used to provide a path for placement of drop facilities.

**"Telecommunications service"** means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

**"Telemarketing"** means contacting a person by telephone in an attempt to sell one or more products or services.

**"Toll restriction" or "toll restricted"** means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

**"Traffic"** means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

**"Trouble report"** means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

**"Trunk"** means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-021, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-021, filed 12/12/02, effective 7/1/03. Statutory Authority: RCW 80.04.160, 80.36.520 and 80.01.040. 99-02-020 (Order R-452, Docket No. UT-970301), § 480-120-021, filed 12/29/98, effective 1/29/99. Statutory Authority: RCW 80.01.040. 93-06-055 (Order R-384, Docket No. UT-921192), § 480-120-021, filed 2/26/93, effective 3/29/93. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW. 91-13-078 (Order R-345, Docket No. UT-900726), § 480-120-021, filed 6/18/91, effective 7/19/91. Statutory Authority: RCW 80.01.040 and 1988 c 91. 89-04-044 (Order R-293, Docket No. U-88-1882-R), § 480-120-021, filed 1/31/89. Statutory Authority: RCW 80.01.040. 86-11-009 (Order R-250, Cause No. U-85-58), § 480-120-021, filed 5/12/86, effective 7/31/86. Statutory Authority: RCW 80.01.040 and 1985 c 450. 85-23-001 (Order R-242, Cause No. U-85-56), § 480-120-021, filed 11/7/85. Statutory Authority: RCW 80.04.060. 79-10-060 (Order R-131, Cause No. U-79-42), § 480-120-021, filed 9/18/79. Statutory Authority: RCW 80.36.140. 79-03-031 (Order R-123, Cause No. U-79-01), § 480-120-021, filed 2/28/79; Order R-25, § 480-120-021, filed 5/5/71. Formerly WAC 480-120-030.]

**WAC 480-120-034 Classification of local exchange companies as Class A or Class B.** (1) Each local exchange company is classified as a Class A company or a Class B company, based on the number of access lines it provides to Washington state customers.

(2) The classification of a company as Class A or Class B is made without respect to the company's classification as a competitive company under RCW 80.36.320.

(3) For purposes of classifying a company as Class A or Class B, the number of access lines served by the local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(4) Any company whose classification as Class A or Class B changes, due to a change in the number of access lines served, a change in affiliate relationships, or other reason, must notify the commission secretary of the change in classification within thirty days after the end of the month in which change in classification occurs.

(5) By July 1 of each year, the commission will publish on its web site the total number of access lines served by local exchange companies in Washington, based on information reported by companies for the previous calendar year, and a calculation of the two percent threshold.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-034, filed 1/10/05, effective effective 2/10/05.]

**WAC 480-120-112 Company performance for orders for nonbasic services.** (1) Except as provided in subsection (2) of this section, the local exchange company (LEC) must complete orders for all nonbasic services within one hundred eighty days of the order date or by a later date requested by a customer.

(2) The timeline set forth in subsection (1) of this section does not apply when a later installation or activation is permitted under WAC 480-120-071 (Extension of service), or when the commission has granted an exemption from the requirement for installation or activation of a particular order under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-112, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-112, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-122 Establishing credit—Residential services.** This section applies only to the provision of residential services.

(1) For a local exchange company (LEC) that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering. The LEC may require an applicant or customer of residential basic service to pay a local service deposit only if:

(a) The applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) The applicant or customer has had basic service discontinued by any telecommunications company;

(c) The applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) The applicant's or customer's service is being restored following a discontinuation for nonpayment or

acquiring service through deceptive means under WAC 480-120-172(1); or

(e) The applicant or customer has been disconnected for taking service under deceptive means as described in WAC 480-120-172(1).

(2) A LEC may, if provided for in its tariff or price list, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means, pay a deposit, or make advanced payments consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit or advanced payments for ancillary services.

(3) An interexchange company may, if provided for in its tariff or price list, require an applicant or customer of interexchange services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for interexchange services.

(4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the company must offer the applicant or customer the following options:

(a) Pay no more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or

(b) Where technology permits, the applicant or customer must have the option of accepting toll-restricted basic service in lieu of payment of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

A company must remove toll restriction unless the customer requests to retain it when the customer makes full payment of the requested interexchange company deposit or pays fifty percent of the requested deposit and enters into payment arrangements as provided for in (a) of this subsection.

(6) A company may require an applicant or customer to pay a deposit or make advanced payments equal to two months' charges for ancillary service before providing or continuing ancillary services.

(7) A company may require an applicant or customer to pay a deposit if it finds that service was provided initially without a deposit based on incorrect information and the customer otherwise would have been required to pay a deposit.

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice to the customer listing the reason(s) for the request, the date the deposit must be paid, and the actions the company may take if the deposit is not paid.



(b) Except for circumstances described in subsection (8) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery, if the notice is delivered in person to the customer.

(8)(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay unbilled toll charges or pay a new or additional deposit amount when the customer's toll charges exceed thirty dollars, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll-restrict a customer's services if the customer is unable to pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The company must give the customer the option to pay one of the following:

- (i) All outstanding toll charges specified in the notice; or
- (ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or
- (iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

(c) When an applicant does not have a customary utilization amount from a previous service, the company may request that the applicant estimate the greatest monthly toll amount the applicant expects to use. If the company asks for an estimate, it must explain that if the customer's toll charges exceed the amounts in (a) of this subsection, the company may toll restrict or require a deposit as permitted in this subsection.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-122, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-122, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-128 Deposit administration. (1) Transfer of deposit.** A company must transfer a customer's deposit, less any outstanding balance, from the account at one service address to another service address, when a customer moves to a new address, is required to pay a deposit, and continues to receive service from that company.

(2) **Interest on deposits.** Companies that collect customer deposits must pay interest on those deposits calculated:

(a) For each calendar year, at the rate for the one-year Treasury Constant Maturity as of November 15 of the previous year, as calculated by the U.S. Treasury and published in the Federal Reserve's Statistical Release H.15; and

(b) From the date of deposit to the date of refund or when applied directly to the customer's account.

(3) **Refunding deposits for retail services.** Companies must refund deposits, plus accrued interest, less any outstanding balance, to a retail customer when:

(a) A customer terminates service or services for which a deposit is being held.

A company is not required to refund an amount held on deposit when a customer requests a discontinuation of service or services but requests to establish similar service with a company for which the current deposit holder also provides billing and collection service. The new provider must have authority with the commission to collect deposits; or

(b) The customer has paid for service for twelve consecutive months in a prompt and satisfactory manner as evidenced by the following:

(i) The company has not issued a discontinuation notice against the customer's account for nonpayment during the last twelve months; and

(ii) The company has sent no more than two delinquency notices to the customer in the last twelve months.

(4) A company may apply a deposit refund to a customer's account or, upon customer request, must provide the refund in the form of a check issued and mailed to the customer no later than thirty days after satisfactory payment history is established or thirty days after the date the closing bill is paid when service is terminated.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-128, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-128, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-147 Changes in local exchange and intrastate toll services.** For the purpose of this section "subscriber" is any one of the following: The party identified in the account records of a common carrier as responsible for payment of the telephone bill; any adult person authorized by such party to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such party.

(1) **Verification of orders.** A local exchange or intrastate toll company that requests on behalf of a subscriber that the subscriber's company be changed, and that seeks to provide retail services to the subscriber (submitting company), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:

(a) The company has obtained the subscriber's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in (a)(i) through (vi) of this subsection, having the sole purpose of authorizing a telecommunications company to initiate a preferred company change. The letter of agency, whether written or electronic, must be signed and dated by the subscriber of the telephone line(s) requesting the preferred company change. The letter of agency must not be combined on the same document or on the same screen or web page with inducements of any kind; however, it may be combined with checks that contain only the required letter of agency language as prescribed in (a)(i) through (vi) of this subsection, and the necessary information to make the check a negotiable instrument. The check may not contain any promotional language or material. It must contain, in easily readable, boldface type on the front of the check, a notice that the subscriber is authorizing a preferred company change by signing the check. Letter-of-agency lan-

guage must be placed near the signature line on the back of the check. Any company designated in a letter of agency as a preferred company must be the company directly setting the rates for the subscriber. If any portion of a letter of agency is translated into another language, then all portions must be translated into that language, as well as any promotional materials, oral descriptions or instructions provided with the letter of agency. The letter of agency must confirm the following information from the subscriber:

(i) The subscriber billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change;

(iii) The subscriber's understanding of the change fee;

(iv) That the subscriber designates (name of company) to act as the subscriber's agent for the preferred company change;

(v) That the subscriber understands that only one telecommunications company may be designated as the subscriber's intraLATA preferred company; that only one telecommunications company may be designated as the subscriber's interLATA preferred company; and that only one telecommunications company may be designated as the subscriber's local exchange provider, for any one telephone number. The letter of agency must contain a separate statement regarding the subscriber's choice for each preferred company, although a separate letter of agency for each choice is not necessary; and

(vi) Letters of agency may not suggest or require that a subscriber take some action in order to retain the current preferred company.

(b) The submitting company has obtained the subscriber's authorization, as described in (a) of this subsection, electronically, by use of an automated, electronic telephone menu system. This authorization must be placed from the telephone number(s) for which the preferred company is to be changed and must confirm the information required in (a)(i) through (vi) of this subsection.

Telecommunications companies electing to confirm the preferred company change electronically must establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) must connect a subscriber to a voice response unit, or similar device, that records the required information regarding the change, including recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth). A company or a company's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection with the third-party verifier has been established. The independent third party must not be owned, managed, controlled or directed by the company or the company's marketing agent; and must not have any financial incentive to confirm preferred company change orders for the company or the company's marketing agent. The content of the verification must include clear and unam-

biguous confirmation that the subscriber has authorized a preferred company change.

(2) Where a telecommunications company is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll) that company must obtain separate authorization, and separate verification, from the subscriber for each service sold, although the authorizations may be made within the same solicitation.

(3) The documentation regarding a subscriber's authorization for a preferred company change must be retained by the submitting company, at a minimum, for two years to serve as verification of the subscriber's authorization to change his or her telecommunications company. The documentation must be made available to the subscriber and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.

(4) **Implementing order changes.** An executing company may not verify directly with the subscriber the submission of a change in a subscriber's selection of a provider received from a submitting company. The executing company must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting company. An executing company is any telecommunications company that affects a request that a subscriber's company be changed. Except as provided by contract, a telecommunications company must submit a preferred company change order on behalf of a subscriber within no more than sixty days of obtaining authorization.

This section does not prohibit any company from investigating and responding to any subscriber-initiated inquiry or complaint.

(5) **Preferred carrier freezes.** A preferred carrier freeze prevents a change in a subscriber's preferred company selection unless the subscriber gives the company from whom the freeze was requested express consent. Express consent means direct, written, electronic, or oral direction by the subscriber. All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all subscribers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intraLATA toll, and interLATA toll). The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All LECs must notify all subscribers of the availability of a preferred carrier freeze, no later than the subscriber's first telephone bill, and once per year must notify all local exchange service subscribers of such availability on an individual subscriber basis (e.g., bill insert, bill message, or direct mailing).

(b) All company-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the subscriber will be unable to make a change in company selection unless he or she lifts the freeze;

and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange company may implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred company, as described in subsections (1) and (2) of this section.

(d) All LECs must offer subscribers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A subscriber's written or electronic authorization stating the subscriber's intent to lift the freeze;

(ii) A subscriber's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting company to conduct a three-way conference call with the executing company and the subscriber in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing company must confirm appropriate verification data (e.g., the subscriber's date of birth), and the subscriber's intent to lift the freeze.

(iii) The LEC must lift the freeze within three business days of the subscriber request.

(e) A LEC may not change a subscriber's preferred company if the subscriber has a freeze in place, unless the subscriber has lifted the freeze in accordance with this subsection.

(6) **Remedies.** In addition to any other penalties provided by law, a submitting company that requests a change in a subscriber's company without proper verification as described in this rule must receive no payment for service provided as a result of the unauthorized change and must promptly refund any amounts collected as a result of the unauthorized change. The subscriber may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment must be remitted to the subscriber's authorized telecommunications company.

(7) **Exceptions.** Companies transferring subscribers as a result of a merger, purchase of the company, or purchase of a specific subscriber base are exempt from subsections (1) through (6) of this section if the companies comply with the following conditions and procedures:

(a) The acquiring company must provide a notice to each affected subscriber at least thirty days before the date of transfer. Such notice must include the following information:

(i) The date on which the acquiring company will become the subscriber's new provider;

(ii) The rates, terms, and conditions of the service(s) to be provided upon transfer, and the means by which the acquiring company will notify the subscriber of any change(s) to those rates, terms, and conditions;

(iii) That the acquiring company will be responsible for any company change charges associated with the transfer;

(iv) The subscriber's right to select a different company to provide the service(s);

(v) That the subscriber will be transferred even if the subscriber has selected a "freeze" on his/her company choices, unless the subscriber chooses another company before the transfer date;

(vi) That, if the subscriber has a "freeze" on company choices, the freeze will be lifted at the time of transfer and the subscriber must "refreeze" company choices;

(vii) How the subscriber may make a complaint prior to or during the transfer; and

(viii) The toll-free customer service telephone number of the acquiring company.

(b) The acquiring company must provide a notice to the commission at least thirty days before the date of the transfer. Such notice must include the following information:

(i) The names of the parties to the transaction;

(ii) The types of services affected;

(iii) The date of the transfer; and

(iv) That the company has provided advance notice to affected subscribers, including a copy of such notice.

(c) If after filing notice with the commission any material changes develop, the acquiring company must file written notice of those changes with the commission no more than ten days after the transfer date announced in the prior notice. The commission may, at that time, require the company to provide additional notice to affected subscribers regarding such changes.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-147, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353, 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-120-147, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160, 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-147, filed 12/12/02, effective 7/1/03.]

#### **WAC 480-120-161 Form of bills. (1) Bill frequency.**

Companies must offer customers, at a minimum, the opportunity to receive billings on a monthly interval, unless subsection (11) of this section applies.

(2) **Length of time for payment of a bill.** Bill due dates must reflect a date which at a minimum allows a customer fifteen days from the date of mailing for payment.

(a) Upon showing of good cause, a customer may request and the company must allow the customer to pay by a date that is not the normally designated payment date on their bill. Good cause may include, but not be limited to, adjustment of the billing cycle to parallel receipt of income.

(i) A company may not assess late payment fees for the period between the regularly scheduled due date and the customer-chosen due date so long as the customer makes payment in full by the customer-chosen due date.

(ii) A company may refuse to establish a preferred payment date that would extend the payment date beyond the next normally scheduled payment or due date.

(b) If a company is delayed in billing a customer, the company must offer arrangements upon customer request or upon indication that a payment arrangement is necessary, that are equal to the length of time the bill is delayed beyond the regularly scheduled billing interval (e.g., if the bill includes two months delayed charges, the customer must be allowed to pay the charges over two months).

Companies may not charge a customer late payment fees on the delayed charges during the extended payment period.

(3) **Form of bill.** With the consent of the customer, a company may provide regular billings in electronic form if the bill meets all the requirements of this rule. The company must maintain a record of the customer's request, and the customer may change from electronic to printed billing upon request.

(4) **Bill organization.** Telephone bills must be clearly organized, and must comply with the following requirements:

(a) Bills may only include charges for services that have been requested by the customer or other individuals authorized to request such services on behalf of the customer, and that have been provided by the company;

(b) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill;

(c) Where charges for two or more companies appear on the same telephone bill, the charges must be separated by service provider;

(d) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider; and

(e) The telephone bill must include the internet address (uniform resource locator) of the web site containing the service provider's tariff or price list, if the service provider is a telecommunications company required to publish its tariff or price list on a web site pursuant to WAC 480-80-206(2) (Price list availability to customers) or WAC 480-120-193 (Posting of tariffs for public inspection and review). This requirement may be satisfied by including the address of a web site other than that of the telecommunications company itself, if the web site provides access to the tariff or price list that applies to the service being billed.

For purposes of this subsection, "new service provider" means a service provider that did not bill the customer for service during the service provider's last billing cycle. This definition includes only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled.

For purposes of this subsection, "clearly and conspicuously" means notice that would be apparent to a reasonable customer.

**(5) Descriptions of billed charges.**

(a) The bill must include a brief, clear, nonmisleading, plain language description of each service for which a charge is included. The bill must be sufficiently clear in presentation and specific enough in content so that the customer can determine that the billed charges accurately reflect the service actually requested and received, including individual toll calls and services charged on a per-occurrence basis.

(b) The bill must identify and set out separately, as a component of the charges for the specific service, any access or other charges imposed by order of or at the direction of the Federal Communications Commission (FCC).

(c) The bill must clearly delineate the amount or the percentage rate and basis of any tax assessed by a local jurisdiction.

**(6) Charges for which service can be discontinued.** Where a bill contains charges for basic service, in addition to other charges, the bill must distinguish between charges for which nonpayment will result in loss of basic service. The bill must include telephone numbers by which customers may inquire or dispute any charges on the bill. A company may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the customer's

account and is fully authorized to resolve the customer's complaints on the company's behalf. Where the customer does not receive a paper copy of the telephone bill, but instead accesses that bill only by e-mail or internet, the company may comply with this requirement by providing on the bill an e-mail or web site address. Each company must make a business address available upon request from a customer.

**(7) Itemized statement.** A company must provide an itemized statement of all charges when requested by a customer, including, but not limited to:

(a) Rates for individual services;

(b) Calculations of time or distance charges for calls, and calculations of any credit or other account adjustment; and

(c) When itemizing the charges of information providers, the name, address, telephone number, and toll-free number, if any, of the providers.

**(8) Methods of payment.**

(a) Companies must, at a minimum, allow the following methods of payment: Cash, certified funds (e.g., cashier check or money order), and personal checks.

(b) Upon written notice to a customer, companies may refuse to accept personal checks when that customer has tendered two or more nonsufficient-funds checks within the last twelve months.

**(9) Billing companies.** A company may bill regulated telecommunications charges only for companies properly registered to provide service within the state of Washington or for billing agents. The company must, in its contractual relationship with the billing agent, require the billing agent to certify that it will submit charges only on behalf of properly registered companies; and that it will, upon request of the company, provide a current list of all companies for which it bills, including the name and telephone number of each company. The company must provide a copy of this list to the commission for its review upon request.

**(10) Crediting customer payments.** Unless otherwise specified by the customer, payments that are less than the total bill balance must be credited first to basic service, with any remainder credited to any other charges on the bill.

For purposes of this subsection, basic service includes associated fees and surcharges such as FCC access charges. Basic service does not include ancillary services such as caller identification and custom calling features.

**(11) Exemptions from this rule.** Prepaid calling card services (PPCS) are exempt from subsections (1) through (10) of this section.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-161, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-161, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-166 Commission-referred complaints.**

(1) Each company must keep a record of all complaints concerning service or rates for at least two years and, on request, make them readily available for commission review. The records must contain complainant's name and address, date and the nature of the complaint, action taken, and final result.

(2) Each company must have personnel available during regular business days to respond to commission staff.

(3) Applicants, customers, or their authorized representatives, may file with the commission an informal complaint

as described in WAC 480-07-910 (Informal complaints) or a formal complaint against a company when there are alleged violations of statutes, administrative rules, or tariffs as provided by WAC 480-07-370 (Pleadings—General).

(4) When the commission staff refers an informal complaint to a company, the company must:

(a) Stop any pending action involving the issues raised in the complaint provided any amounts not in dispute are paid when due (e.g., if the complaint involves a disconnect threat or collection action, the disconnect or collection must be stopped);

(b) Thoroughly investigate all issues raised in the complaint and provide a complete report of the results of its investigation to the commission, including, if applicable, information that demonstrates that the company's action was in compliance with commission rules; and

(c) Take corrective action, if warranted, as soon as appropriate under the circumstances.

(5) Commission staff will ask the customer filing the informal complaint whether the customer wishes to speak directly to the company during the course of the complaint, and will relay the customer's preference to the company at the time staff opens the complaint.

(6) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).

(7) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days.

(9) The company must keep commission staff informed when relevant changes occur in what has been previously communicated to the commission and when there is final resolution of the informal complaint.

(10) An informal complaint opened with the company by commission staff may not be considered closed until commission staff informs the company that the complaint is closed.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-166, filed 1/10/05, effective 2/10/05; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-166, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-166, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-172 Discontinuing service—Company initiated.** (1) A company may discontinue service without notice or without further notice when after conducting a thor-

ough investigation, it finds the customer has used deceptive means to initiate or continue service including, but not limited to:

(a) Tampering with the company's property;

(b) Using service through an illegal connection; or

(c) Unlawfully using service or using service for unlawful purposes.

(2)(a) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it determines the customer has:

(i) Vacated the premises without informing the company;

(ii) Paid a delinquent balance in response to a delinquency notice as described in subsection (7) of this section with a check or electronic payment that is subsequently dishonored by the bank or other financial institution; or

(iii) Failed to keep payment arrangements agreed upon in response to a delinquency notice as described in subsection (7) of this section.

(b) The company must restore service once the customer has corrected the reason for discontinuance as described in subsection (2)(a) of this section.

(c) The company may require a deposit from a customer that it has disconnected due to the reasons described in subsection (2)(a) of this section.

(3) A company may discontinue service after providing proper notice, or may issue a discontinuation notice, if, and only if:

(a) The company determines the customer has violated a rule, statute, service agreement, filed tariff, or price list;

(b) The company determines the customer has used customer-owned equipment that adversely affects the company's service to its other customers;

(c) The company determines the customer has not paid regulated charges or has not paid a deposit as provided in the tariff or price list of the company or another company with which it has a billing and collection agreement, except for nonpayment of charges incurred from information delivery services as provided for in WAC 480-120-254 (Telephone solicitation) or disputed third party-billed charges;

(d) The company is unable to substantiate the identity of the individual requesting service:

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification;

(ii) Company business offices and payment agencies, required under WAC 480-120-132 (Business offices) and 480-120-162 (Cash and urgent payments), must provide a means for applicants to provide identification at no charge to the applicant;

(e) The company determines the customer has received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, use of an alias or false name with intent to deceive, or rotation of service among roommates or persons living together for the purpose of avoiding the debts of one or more persons; or

(f) The company determines the customer is receiving service at an address where a former customer is known to

reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and there is evidence that the applicant lived at the address while the overdue, unpaid prior obligation was incurred and helped incur the obligations. However, a company may not deny service if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(4) Except as provided in subsections (1), (2), and (3) of this section, a company may discontinue:

(a) Basic service only for nonpayment of basic service charges;

(b) Ancillary services only for nonpayment of ancillary charges or if the company properly discontinues basic service;

(c) Interexchange access only for nonpayment of interexchange charges or if the company properly discontinues basic service:

(i) At its discretion, the company may permit access to toll-free numbers while a customer's interexchange access service is discontinued or restricted;

(ii) The company may not charge fees for toll restriction when it has discontinued or restricted the customer's interexchange access service under this section;

(d) A company must not shift a rate plan as a discontinuation method.

(5) When a company discontinues service to a customer, it must also discontinue billing for service as of the date of the discontinuation.

**(6) Medical emergencies.**

(a) When a local exchange company (LEC) has cause to discontinue residential basic service or has discontinued service, it must postpone total service discontinuation or reinstate toll-restricted basic service that permits both making and receiving calls and access to E911 for a grace period of five business days after receiving either oral or written notice of the existence of a medical emergency, as described in (b) of this subsection. The LEC must reinstate service during the same day if the customer contacts the LEC prior to the close of the business day and requests a same-day reconnection. Otherwise, the LEC must restore service by 12:00 p.m. the next business day. When service is reinstated, the LEC cannot require payment of a reconnection charge or deposit before reinstating service but may bill the charges at a later date.

(b) The LEC may require that the customer submit written certification from a qualified medical professional, within five business days, stating that the discontinuation of basic service or restricted basic service would endanger the physical health of a resident of the household. "Qualified medical professional" means a licensed physician, nurse practitioner, or physician's assistant authorized to diagnose and treat the medical condition without supervision of a physician. Nothing in this subsection precludes a company from accepting other forms of certification, but the maximum the company can require is written certification. If the company requires written certification, it may require only:

(i) The address of the residence;

(ii) An explanation of how discontinuation of basic service or restricted basic service would endanger the physical health of the resident;

(iii) A statement of how long the condition is expected to last; and

(iv) The title, signature, and telephone number of the person certifying the condition.

(c) The medical certification is valid only for the length of time the medical professional certifies the resident's health would be endangered, but no longer than ninety days unless renewed.

(d) A medical emergency does not excuse a customer from paying delinquent and ongoing charges. The company may require that, within the five-day grace period, the customer pay a minimum of twenty-five percent of the delinquent basic service balance or ten dollars, whichever is greater, and enter into an agreement to pay the remaining delinquent basic service balance within ninety days, and agree to pay subsequent bills when due.

Nothing in this subsection precludes the company from agreeing to an alternate payment plan, but the company must not require the customer to pay more than this section prescribes and must send a notice to the customer confirming the payment arrangements within two business days.

(e) The company may discontinue basic service or restrict basic service without further notice if, within the five-day grace period, the customer fails to provide an acceptable medical certificate or pay the amount required under (d) of this subsection. The company may discontinue basic service or restrict basic service, without further notice, if the customer fails to abide by the terms of the payment agreement.

(f) The company must ensure that the records of medical emergencies are used or disclosed only for the purposes provided for in this section.

**(7) Discontinuation notice requirements.** The company must provide the customer notice before discontinuing service in accordance with (a) through (c) of this subsection, except as provided in subsection (1) of this section, and except as provided in WAC 480-120-122(8).

(a) Each company must provide a written discontinuation notice to the customer either by first class mail, personal delivery to the customer's service address, or electronically delivered when the company has the technical capability and the customer consents to this delivery method. A company must provide delivered notice by handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. The discontinuation notice must include, at a minimum:

(i) A discontinuation date that is not less than eight business days after the date the notice is mailed, transmitted electronically, or personally delivered;

(ii) The amount(s) owing for the service(s) that is subject to discontinuation or restriction;

(iii) A statement that clearly indicates the amount a customer must pay to maintain basic service or restricted basic service, regardless of the full amount owed by the customer;

(iv) Instructions on how to correct the problem to avoid the discontinuation;

(v) Information about any discontinuation or restoration charges that may be assessed;

(vi) Information about how a customer can avoid disconnection under the medical emergency rules described in subsection (6) of this section; and

(vii) The company's name, address, toll-free number, and TTY number where the customer may contact the company to discuss the pending discontinuation of service.

(b) If the company discovers that the information provided on the notice failed to meet the requirements of (a) of this subsection, or if the company discovers it provided incorrect information on the notice, the company must restore service and issue a second notice with accurate information as described in this section.

(c) If the company has not discontinued service within ten business days of the first day the discontinuation may be implemented, the discontinuation notice is void, unless the customer and the company have entered into a mutually acceptable payment agreement with payment dates that exceed the ten-day period. Upon a void notice, the company must provide a new discontinuation notice to the customer if the company intends to discontinue service at a later date.

(8) In addition to the notice required in subsection (7) of this section, a company must attempt to make personal contact with a customer prior to discontinuing service. Any of the following methods will satisfy the personal contact requirement:

(a) **Delivered notice.** A company must provide delivered notice handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. The notice must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the next business day after the date of delivery;

(b) **Electronically issued notice.** If the company has the technical capability to provide electronic notice and the customer has agreed to receive notice in electronic form, the notice sent by the company must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the second business day after the date of delivery;

(c) **Mailed notice.** The notice mailed by the company may not include a scheduled discontinuation date that is earlier than 5:00 p.m. of the third business day after the date of mailing. The date of mailing is not the first day of the notice period; or

(d) **Telephone notice.** The company must attempt at least two times to contact the customer during regular business hours. If the company is unable to reach the customer on the first attempt, the company must attempt to contact the customer using any business or message number provided by the customer as a contact number. The company must keep a log or record of the calls for a minimum of ninety calendar days showing the telephone number called, the time of the call, and details of the results of each attempted call. The disconnection must not take place before 5:00 p.m. of the next business day after the phone calls or attempts.

(e) A company need not attempt personal contact as provided for in (a) through (d) of this subsection when the company has had cause, in any two previous billing periods during a consecutive twelve-month period, to attempt such contact and the company has notified the customer in writing that

such contact will not be attempted in the future before effecting a discontinuation of services.

(9) Except in case of danger to life or property, companies may not discontinue service on days that it is not fully staffed to discuss discontinuation and reestablish service to the customer on the same or the following day.

(10) When the company has reasonable grounds to believe that service is to other than the party of record, the company must make reasonable efforts to inform the occupants at the service address of the impending discontinuation. Upon request of one or more service users, the company must allow a minimum period of five business days to permit the service user to arrange for continued service.

The company is not required to allow the additional five days when a thorough investigation indicates there is deceptive activity at the service address.

(11) LECs must provide notice of pending local service discontinuation to the secretary, Washington state department of social and health services, and to the customer, where it provides service to a facility with resident patients including, but not limited to, hospitals, medical clinics, or nursing homes. Upon request from the secretary or a designee, the company must allow a delay in discontinuation of no less than five business days from the date of notice so that the department may take whatever steps are necessary in its view to protect the interests of patients living within the facilities.

(12) **Remedy and appeals.** The company must not discontinue or restrict service while a customer is pursuing any remedy or appeal provided for by these rules, if the customer pays any amounts not in dispute when due and the customer corrects any conditions posing a danger to health, safety, or property. The company must inform the customer of these provisions when the customer is referred to a company's supervisor or the commission.

During a dispute a company may, upon authorization from commission staff, discontinue service when a customer's toll charges substantially exceed the amount of any deposit or customary use and it appears the customer may incur excessive, uncollectible toll charges while an appeal is being pursued. A customer whose service is subject to discontinuation may maintain service pending resolution of any dispute upon payment of outstanding toll charges subject to refund if the dispute is resolved in the customer's favor.

(13) **Payment at a payment agency.** Payment of any past-due amounts to a designated payment agency of the company constitutes payment to the company when the customer informs the company of the payment and the company verifies the payment.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-172, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-172, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-173 Restoring service after discontinuation.** (1) A company must restore a discontinued service when:

(a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of deceptive means, as described in WAC 480-120-172(1), this means the customer has corrected the deception and has paid the estimated amount of service that was taken through

deceptive means, all costs resulting from the deception, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service deceptively as described in WAC 480-120-172(1). A company is not required to allow six-month arrangements on a delinquent balance as provided for in WAC 480-120-174(1) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;

(b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made as provided in WAC 480-120-122 (Establishing credit—Residential services) and 480-120-174 (Payment arrangements); or

(c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.

(2) After the customer notifies the company that the causes for discontinuation have been corrected, and the company has verified the correction, the company must restore service(s) within the following periods:

(a) Service(s) that do not require a premises visit for reconnection must be restored within one business day; and

(b) Service(s) that require a premises visit for reconnection must be restored within two business days. Companies must offer customers a four-hour window during which the company will arrive to complete the restoration.

(c) For purposes of this section Saturdays are considered business days.

(3) A company may refuse to restore service to a customer who has been discontinued twice for deceptive means as described in WAC 480-120-172(1) for a period of five years from the date of the second disconnection, subject to petition by the customer to the commission for an order requiring restoration of service based on good cause.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-173, filed 1/10/05, effective 2/10/05; 03-01-065 and 03-03-090 (Docket No. UT-990146, General Order No. R-507 and 507A), § 480-120-173, filed 12/12/02 and 1/16/03, effective 7/1/03.]

**WAC 480-120-174 Payment arrangements. (1) General.** Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first installment of a deposit is paid as provided for in WAC 480-120-122 (Establishing credit—Residential services).

(2) **Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility.** Local exchange companies (LECs) must restore service for any customer who has had basic service discontinued for nonpayment under WAC 480-120-172 (Discontinuing service—Company initiated) if the

customer was not a participant in either the Washington telephone assistance program (WTAP) or the federal enhanced tribal lifeline program at the time service was discontinued and if the customer is eligible to participate in WTAP or the federal enhanced tribal lifeline program at the time the restoration of service is requested. To have service restored under this subsection, a customer must establish eligibility for either WTAP or the federal enhanced tribal lifeline program, agree to continuing participation in WTAP or the federal enhanced tribal lifeline program, agree to pay unpaid basic service and ancillary service amounts due to the LEC at the monthly rate of no more than one and one-half times the telephone assistance rate required to be paid by WTAP participants as ordered by the commission under WAC 480-122-020 (Washington telephone assistance program rate), agree to toll restriction, or ancillary service restriction, or both, if the company requires it, until the unpaid amounts are paid. Companies must not charge for toll restriction when restoring service under this section.

In the event a customer receiving service under this subsection fails to make a timely payment for either monthly basic service or for unpaid basic service or ancillary service, the company may discontinue service pursuant to WAC 480-120-172.

(3) Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges or over a longer period than described in this rule as long as both the company and the customer agree to the payment arrangement. Longer payment arrangements as described in this subsection satisfy the requirements in subsection (1) or (2) of this section.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-174, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-174, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-196 Customer notice requirements—Competitively classified telecommunications companies or services.** This rule sets out requirements in specific circumstances for notices that companies must provide to customers when services are provided under price list.

(1) A company must provide customer notice before the effective date of changes to the price list for competitively classified companies or competitively classified services.

(a) The company must provide notice to each affected customer at least ten days before the effective date when a company proposes to:

- (i) Increase rates;
- (ii) Decrease rates; or
- (iii) Change terms or conditions.

The company must measure the ten-day period from the time the notice is mailed to all customers or appears in the newspaper or on the web site.

(b) Each customer notice must include, at a minimum:

- (i) The effective date;
- (ii) A clear description of changes to rates and services;
- (iii) A company contact number where customers can seek additional information; and
- (iv) The internet address (uniform resource locator) of the web site where the company's price list is posted, unless



the company is not required by WAC 480-80-206(2) (Price list availability to customers) to post its price list.

(c) For increase in rates or a material change of terms and conditions a company must provide notice by bill insert, bill message, printing on the billing envelope, a separate mailing to all affected customers, or, if a company has the capability and the customer has authorized, by e-mail.

(d) For changes not covered by (c) of this subsection. A company must provide notice by:

- (i) Any method listed in (c) of this subsection;
- (ii) Publishing the notice in one or more newspapers of general circulation for the affected areas; or
- (iii) Posting the notice on the web site on which the price list is available to the public.

(2) A company may request assistance from the commission's designated public affairs officer with efforts to comply with this section.

(3) As an alternative to the customer notice required by this rule, a company may propose another form of customer notice. The commission's public affairs officer must approve any such notice in advance.

(4) Within ten days of making a filing requiring posting, publication, or customer notice required by this rule, a company must file a statement with the commission records center that the required notice has been posted, published, and/or mailed. The statement must include:

- (a) The methods used to post, publish, and/or give notice to customers;
- (b) When the notice was first posted, published, and/or issued to customers; and
- (c) A copy of the notice.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-196, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-120-196, filed 5/14/02, effective 6/17/02.]

**WAC 480-120-202 Customer proprietary network information.** (1) The commission adopts by reference the Federal Communications Commission's rules codified at sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations (47 CFR §§ 64.2003 through 64.2009), concerning protection of Customer Proprietary Network Information, for application to all telecommunications carriers providing wireline, intrastate telecommunications service in Washington. The effective date for these sections is stated in WAC 480-120-999 (Adoption by reference).

(2) Telecommunications carriers providing wireline, intrastate telecommunications service in Washington shall provide the commission with the same notice that carriers are required to provide the Federal Communications Commission under 47 CFR § 64.2009(f).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-202, filed 1/10/05, effective 2/10/05.]

**WAC 480-120-253 Automatic dialing-announcing device (ADAD).** (1) An automatic dialing and announcing device (ADAD) is a device that automatically dials telephone numbers and plays a recorded message once a connection is made.

(2) "Commercial solicitation" means an unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(3) This rule regulates the use of ADADs for purposes other than commercial solicitation. RCW 80.36.400 prohibits the use of an ADAD for purposes of commercial solicitation intended to be received by telephone customers within the state.

(4) This rule does not apply to the use of ADADs by government agencies to deliver messages in emergency situations.

(5) Except for emergency notification as provided for in subsection (6) of this section, an ADAD may be used for calls to telephone customers within the state only if:

(a) The recorded message states the nature of the call, identifies the individual, business, group, or organization for whom the call is being made, and telephone number to which a return call can be placed;

(b) The ADAD automatically disconnects the telephone connection within two seconds after the called party hangs up the receiver; and

(c) The ADAD does not dial designated public service emergency telephone numbers as listed in published telephone directories, or any telephone number before 8:00 a.m. or after 9:00 p.m.

(6) An emergency ADAD may be connected to the telephone network and used only if:

(a) The ADAD contains sensors that will react only to a steady tone of at least four seconds duration, broadcasts only on frequencies allocated by the FCC for emergency services, and is designed to prevent accidental triggering of emergency calls;

(b) The ADAD provides some audible tone or message that alerts the user that the device has been activated and will automatically dial the preprogrammed emergency number unless manually deactivated within thirty to forty-five seconds;

(c) The ADAD provides for disconnection within two seconds when the called party performs a predetermined function;

(d) The ADAD satisfies applicable state safety requirements; and

(e) The user registers the instrument with, and receives written approval for, its use from the emergency service entity to which an automatic call would be directed, secures from such entity an approved telephone number or numbers to be programmed into the instrument, and does not program the instrument to dial unlisted numbers, law enforcement numbers, or E911 emergency response numbers.

(7) Before any ADAD may be operated while connected to the telephone network, the potential ADAD user, unless it is a facilities-based LEC using its own facilities, must notify, in writing, the LEC whose facilities will be used to originate calls. The notice must include the intended use of the ADAD equipment, the calendar days and clock hours during which the ADADs will be used, an estimate of the expected traffic volume in terms of message attempts per hour and average length of completed message, and written certification that the equipment can effectively preclude calls to unlisted telephone numbers, designated public service emergency numbers, or any number or series of numbers on a list of tele-

phone customers that may be in the future designated by tariff, regulation, or statute, as customers who are not to receive ADAD calls.

(a) The ADAD user must notify the LEC in writing within thirty days of any changes in the ADAD operation that would result in either an increase or decrease in traffic volume.

(b) For new applications for ADADs, the LEC must review the statement of intended use of ADAD equipment to determine whether there is a reasonable probability that use of the equipment will overload its facilities and may refuse to provide connections for the ADADs or may provide them subject to conditions necessary to prevent an overload.

(8) A LEC may suspend or terminate service to an ADAD user if the LEC determines that the volume of calling originated by the ADAD is degrading the service furnished to others. The LEC must provide at least five days' notice before suspending or terminating service, unless the ADAD creates an overload in the LEC's switching office, in which case it may terminate service immediately, with no prior notice.

(9) If a LEC learns that a customer is using an ADAD in violation of the provisions of this rule, the LEC must suspend or terminate the service of any ADAD user five days after the ADAD user receives a termination notice or immediately, with no prior notice, if use of the ADAD creates overloading in a LEC's switching office.

(10) Each LEC must maintain records of any ADAD equipment a user reports to the LEC as being connected to its facilities. If requested by the commission, the LEC must provide the name of the individual business, group, or organization using the ADAD, their address, and the telephone number or numbers associated with the ADAD.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-253, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-253, filed 12/12/02, effective 7/1/03.]

#### **WAC 480-120-262 Operator service providers (OSPs).** (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to consumers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed through an access code used to bill a consumer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in

Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

"If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other

than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars;

or

(iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

(8) **Emergency calls.** For purposes of emergency calls, every OSP must be able to transfer the caller into the appropriate E911 system and to the public safety answering point (PSAP) serving the location of the caller with a single keystroke from the operator's console, to include automatic identification of the exact location and address from which the call is being made. The OSP must be able to stay on the line with the emergency call until the PSAP representative

advises the operator that they are no longer required to stay on the call. The OSP must provide a toll-free number for direct access to PSAPs should additional information be needed when responding to a call for assistance from a phone using the provider's services. That emergency contact information must not be considered proprietary.

(9) **Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

(10) **Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-262, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-262, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-325 Definitions.** The definitions in this section apply to Part VIII of this chapter.

**"Affiliated interest"** means a person or corporation as defined in RCW 80.16.010.

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Subsidiary"** means any company in which the telecommunications company owns directly or indirectly five

percent or more of the voting securities, unless the telecommunications company demonstrates it does not have control.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-325, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-331 Filing information.** (1) **Filing.** The commission records center will accept any filing under WAC 480-120-365 (Issuing securities) delivered in person, by mail, telefacsimile, or electronic mail message. The commission records center will accept all other reports required in Part VIII in person, by mail, or when procedures are in place, electronic mail message.

(2) **Commission may require additional information.** The commission may require pertinent information in addition to that specified by statute or in this chapter.

(3) **Information by reference.** When any information required to support a filing is on file with the commission, it is sufficient to make specific reference to the information indicating the proceeding, report, or other filing that contains the referenced information.

(4) **When information is unavailable.** If any required information is unavailable at the time of the filing, the filing must include the reason why the information is not available and state when it will be available.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-120-331, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-331, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-335 Additional reports.** Part VIII does not supersede any reporting requirement specified in a commission order or limit the commission's ability to request additional information.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-335, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-339 Streamlined filing requirements for Class B telecommunications company rate increases.**

(1) A Class B company, as defined in WAC 480-120-021 (Definitions), may use the streamlined treatment described in this section for seeking a general rate increase, as an alternative to the requirements in WAC 480-07-510 (General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies).

(2) **General information required.** A Class B company seeking streamlined treatment for a proposed general rate increase must submit the following information at the time of filing or prior to its first notice to customers, whichever occurs first:

(a) A copy of its customer notice as specified in subsection (6) of this section.

(b) A results-of-operations statement, on a commission basis, demonstrating that the company is not presently exceeding a reasonable level of earnings. If the company is exceeding a reasonable level of earnings, the proposed increase must be reduced accordingly.

(c) All supporting documentation used to develop the results-of-operations statement, including supporting documentation for all adjustments.

(d) The results-of-operations statement filed under this subsection must include Washington intrastate results of operations. If a company cannot provide Washington intrastate results of operations with reasonable accuracy, the commission may consider the total Washington results of operations including the interstate jurisdiction.

(3) **Adjustments provided for in the results of operations.**

(a) The results-of-operations statement must provide restating actual adjustments and pro forma adjustments in accordance with (b) of this subsection.

(b) Before the achieved return is calculated, a company must adjust the booked results of operations for restating actual and pro forma adjustments, including the following:

- (i) Nonoperating items;
- (ii) Extraordinary items;
- (iii) Nonregulated operating items; and
- (iv) All other items that materially distort the test period.

(4) **Rate of return.** The authorized overall rate-of-return (for purposes of this section only) is eleven and twenty-five one-hundredths percent.

(5) **Rate design.** A Class B company filing pursuant to this section must clearly describe the basis for allocating any revenue requirement change proposed by customer class (e.g., residential, business, and interexchange).

(6) **Customer notice.** The company must notify customers consistent with the manner outlined in WAC 480-120-194 (Publication of proposed tariff changes to increase charges or restrict access to services), and must include the following information:

(a) The proposed increase expressed in:

- (i) Total dollars and average percentage terms; and
- (ii) The average monthly increases the customers in each category or subcategory of service might reasonably expect;

(b) The name and mailing address of the commission and public counsel;

(c) A statement that customers may contact the commission or public counsel with respect to the proposed rate change; and

(d) The date, time, and place of the public meeting, if known.

(7) **Public meeting(s).** The commission will ordinarily hold at least one public meeting in the area affected by the rate increase within forty-five days after the date of filing.

(8) **Final action.** The commission will ordinarily take final action on a filing under this section within ninety days after the date of filing.

(9) The commission may decline to apply the procedures outlined in this section if it has reason to believe that:

(a) The quality of the company's service is not consistent with its public service obligations; or

(b) A more extensive review is required of the company's results of operations or proposed rate design.

(10) Nothing in this rule will be construed to prevent any company, the commission, any customer, or any other party from using any other procedures that are otherwise permitted by law.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-339, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-344 Expenditures for political or legislative activities.** (1) The commission will not allow either direct or indirect expenditures for political or legislative activities for ratemaking purposes.

(2) For purposes of this rule political or legislative activities include, but are not limited to:

(a) Encouraging support or opposition to ballot measures, legislation, candidates for a public office, or current public office holders;

(b) Soliciting support for or contributing to political action committees;

(c) Gathering data for mailing lists that are generated for the purposes of encouraging support for or opposition to ballot measures, legislation, candidates for public office, or current office holders, or encouraging support for or contributions to political action committees;

(d) Soliciting contributions or recruiting volunteers to assist in the activities set forth in (a) through (c) of this subsection.

(3) Political or legislative activities do not include activities directly related to appearances before regulatory or local governmental bodies necessary for the utility's operations.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-344, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-349 Retaining and preserving records and reports.** (1) Companies must keep all records and reports required by these rules or commission order for three years unless otherwise specified in subsection (2) of this section. No records may be destroyed before the expiration of three years or the time specified in subsection (2) of this section, whichever is applicable.

(2) Companies must adhere to the retention requirements of Title 47, Code of Federal Regulations, Part 42, Preservation of Records of Communication Common Carriers published by the Federal Communications Commission. The effective date is stated in WAC 480-120-999.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-349, filed 1/10/05, effective 2/10/05.]

**WAC 480-120-352 Washington Exchange Carrier Association (WECA).** (1) The Washington Exchange Carrier Association (WECA) may:

(a) File petitions with the commission;

(b) Publish and file tariffs with the commission; and

(c) Represent before the commission those members that so authorize. WECA's rules of procedure are on file with the commission under Docket No. UT-920373, and may be obtained by contacting the commission's records center.

(2) Subject to all the procedural requirements and protections associated with company filings before the commission, WECA must submit to the commission:

(a) All initial WECA tariffs; and

(b) All changes to the tariffs.

(3) A member of WECA may file directly with the commission:

(a) Tariffs, price lists, and contracts;

(b) Revenue requirement computations;

(c) Revenue objectives;

(d) Universal service support cost calculations;

(e) Total service long run incremental cost studies;

(f) Competitive classification petition;

(g) Other reports; or

(h) Any other item it or the commission deems necessary.

(4) The commission has the authority to supervise the activities of WECA. However, such supervision will not compromise the independent evaluation by the commission of any filing or proposal that must be submitted to the commission for approval.

(5) To the extent that WECA is involved in the collection and redistribution of funds under commission orders authorizing certain revenue sharing arrangements under common tariff, it must maintain, provide, and report to the commission annual financial reports, by July 1 of each year, relating to the arrangements. Annual financial reports must include:

(a) Actual fund collections and distributions to each member company;

(b) The basis upon which the collection and distribution is made;

(c) Board membership;

(d) Special committee membership; and

(e) The status and description of any open WECA docket proceedings.

(6) Each local exchange company in the state of Washington has the option of using WECA as its filing agent, tariff bureau, or both. Companies using WECA collectively may file intrastate rates, tariffs, or service proposals.

(7) Nothing in this section will be construed as amending or modifying WECA's current methods of administration. WECA's access charge pooling administration plan is on file with the commission and may be obtained by contacting the commission's records center and requesting the "Ninth Supplemental Order in Docket No. UT-971140 with Attachment" dated June 28, 2000.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-352, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-355 Competitively classified companies.** Competitively classified companies must keep accounts using generally accepted accounting principles (GAAP), or any other accounting method acceptable to the commission. In addition, the accounts must allow for identification of revenues for Washington intrastate operations subject to commission jurisdiction.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-355, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-359 Companies not classified as competitive.** (1)(a) For accounting purposes, each company not classified as competitive must use the *Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies* published by the Federal Communications Commis-

sion (FCC) and designated as Title 47, Code of Federal Regulations, Part 32 (47 CFR 32, or Part 32). The effective date for Part 32 is stated in WAC 480-120-999 (Adoption by reference). Each company not classified as competitive wishing to adopt changes to the USOA made by the FCC after the date specified in WAC 480-120-999, must petition for and receive commission approval. The petition must include the effect of each change for each account and subaccount on an annual basis for the most recent calendar year ending December 31. If the petition is complete and accurate the commission may choose to grant such approval through its consent agenda.

(b) Class B companies may use Class A accounting, but Class A companies must not use Class B accounting.

(2) The commission modifies Part 32 as follows:

(a) Any reference in Part 32 to "Commission," "Federal Communications Commission," or "Common Carrier Bureau" means the Washington utilities and transportation commission.

(b) Each company not classified as competitive must keep subsidiary records to reflect Washington intrastate differences when the commission imposes accounting or rate-making treatment different from the accounting methods required in subsection (2) of this section. Each company not classified as competitive must maintain subsidiary accounting records for:

- (i) Residential basic service revenues;
  - (ii) Business basic service revenues;
  - (iii) Access revenues for each universal service rate element;
  - (iv) Special access revenues; and
  - (v) Switched access revenues.
- (c) Part 32 section 24, compensated absences, is supplemented as follows:

(i) Each company not classified as competitive must record a liability and charge the appropriate expense accounts for sick leave in the year in which the employees use the sick leave.

(ii) Each company not classified as competitive must keep records for:

- (A) Compensated absences that are actually paid; and
- (B) Compensated absences that are deductible for federal income tax purposes.

(d) Each company not classified as competitive that has multistate operations must keep accounting records that provide Washington results of operations. The methods used to determine Washington results of operations must be acceptable to the commission.

(e) Part 32 section 32.11(a) is replaced by WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

(f) Part 32 section 32.11 (d) and (e) are replaced by WAC 480-120-034.

(g) Any reference in Part 32 to "Class A" or "Class B" means the classification as set out in WAC 480-120-034.

(3) The commission does not require Part 32 section 32.2000 (b)(4). This rule does not supersede any accounting requirements specified in a commission order, nor will it be construed to limit the commission's ability to request additional information on a company specific basis. This rule does not dictate intrastate ratemaking.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-359, filed 1/10/05, effective 2/10/05.]

**WAC 480-120-365 Issuing securities.** For the purpose of this section:

"Securities" means stocks, stock certificates, other evidence of interest or ownership, bonds, notes other than those notes exempted from reporting under RCW 80.08.043, or other evidence of indebtedness, or any obligation or liability as guarantor subject to reporting under RCW 80.08.130.

(1) Before a telecommunications company subject to the provisions of chapter 80.08 RCW issues a security, it must file with the commission:

(a) A description of the purposes for which the issuance will be made, including a certification by an officer authorized to do so, that the proceeds from any such financing is for one or more of the purposes allowed by RCW 80.08.030;

(b) A description of the proposed issuance, including the terms of financing; and

(c) A statement as to why the transaction is in the public interest.

(2) A commission order is not required for such a filing. The company may request a written order affirming that the company has complied with the requirements of RCW 80.08.040. The company must submit the request for a commission order, along with the information required in subsection (1) of this section, at least fifteen business days before the requested effective date for the order. Requests for supplemental orders may be exempt from the fifteen business day requirement.

(3) Filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute issuance of a security, and therefore a filing with the commission is not required under the provisions of RCW 80.08.040. A shelf registration filing is defined under the General Rules and Regulations promulgated under the Securities Act of 1933, Rule 415 - Delayed or Continuous Offering and Sale of Securities.

(4) An authorized representative must sign and date the filing and include a certification or declaration that the information is true and correct under penalty of perjury as set forth in chapter 9A.72 RCW. The certificate or declaration must be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

(5) Filings under this section may be submitted with portions designated confidential pursuant to WAC 480-07-160 (Confidential information).

(6) Within sixty days after the issuance of any securities, except for dividend reinvestment and employee benefit plans, a company must file with the commission a verified statement:

(a) Outlining the final terms and conditions of the transaction; and

(b) Setting forth actual proceeds from the issuance and, to the extent known, the disposition of proceeds stating the final amount to be used for each purpose allowed by RCW 80.08.030.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-120-365, filed 8/5/05, effective 9/5/05.]

**WAC 480-120-369 Transferring cash or assuming obligations.** This section does not apply to a company classified as competitive pursuant to RCW 80.36.320, or to a local exchange company that serves less than two percent of the access lines in the state of Washington.

(1) At least five business days before a telecommunications company whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

(a) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(b) When the threshold in (a) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities;

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court;

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the company and its subsidiary or affiliate.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353 [used in WSR 05-06-051 filing only]. 05-06-051 and 05-08-018 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-369, filed 2/28/05 and 3/28/05, effective 3/31/05.]

**WAC 480-120-375 Affiliated interests—Contracts or arrangements.** Prior to the effective date of any contract or arrangement described in RCW 80.16.020, each telecommunications company subject to the provisions of chapter 80.16 RCW must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except for transactions provided at tariff rates, with any affiliated interest. Prior to the effective date of any modification or amendment, the company must file verified copies of the modifications or amendments to the contracts or arrangements. If the contract

or arrangement is unwritten, the company must file a verified summary of any modification or amendment. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the company has failed to prove that it is reasonable and consistent with the public interest.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-375, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-379 Transfers of property.** Before selling, leasing, or assigning any of its property or facilities which are necessary or useful in the performance of its duties to the public, or before acquiring property or facilities of another public utility, a telecommunications company subject to the provisions of chapter 80.12 RCW must obtain from the commission an order authorizing such transaction in accordance with chapters 80.12 RCW (Transfers of property) and 480-143 WAC (Commission general—Transfers of property).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-379, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-382 Annual report for competitively classified companies.** The commission will distribute an annual report form including a regulatory fee form. A competitively classified company must:

(1) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1 of each year;

(2) Provide total number of access lines as required on the annual report form;

(3) Provide income statement and balance sheet for total company; and

(4) Provide revenues for Washington and Washington intrastate operations subject to commission jurisdiction.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-382, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-385 Annual report and quarterly results of operations reports for companies not classified as competitive.** (1) Annual reports for companies not classified as competitive. The commission will distribute an annual report form as specified in (c)(i), (ii), and (iii) of this subsection, and a regulatory fee form. A company not classified as competitive must:

(a) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1 of each year;

(b) Provide total number of access lines as required on the annual report form; and

(c) Provide income statement and balance sheet for total company and results of operations for Washington and Washington intrastate.

(i) Class A companies that the FCC classified as Tier 1 telecommunications companies in Docket No. 86-182 must file annual report forms adopted by the FCC.

(ii) All other Class A companies must file annual reports on the form prescribed by the commission.

(iii) Class B companies must file annual reports as prescribed by RCW 80.04.530(2).

(2) Quarterly reports for companies not classified as competitive:

(a) All Class A companies must file results of operations quarterly.

(b) Each report will show monthly and twelve-months-ended data for each month of the quarter reported.

(c) The reports are due ninety days after the close of the period being reported, except for the fourth-quarter report which is due no later than May 1 of the following year.

(3) Methods used to determine Washington intrastate results of operations must be acceptable to the commission.

(4) This rule does not supersede any reporting requirements specified in a commission rule or order, or limit the commission's authority to request additional information.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-385, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-389 Securities report.** (1) Each telecommunications company subject to the provisions of chapter 80.08 RCW that has issued securities during the prior year, must file with the commission by April 1 of each year an annual securities transaction report for the period January 1 through December 31 of the preceding year. At a minimum, the report must contain:

(a) A description of the final agreements;

(b) A description of the use of proceeds stating the amounts used for each purpose allowed by RCW 80.08.030;

(c) The level of expenses for each of the securities transactions;

(d) Information to determine the individual and collective impact on capital structure; and

(e) The pro forma cost of money for the securities transactions.

(2) The company may provide by reference the information required in subsection (1)(a), (b), and (c) of this section if the information has previously been filed with the commission.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-120-389, filed 8/5/05, effective 9/5/05.]

**WAC 480-120-395 Affiliated interest and subsidiary transactions report.** (1) By June 1 of each year, each telecommunications company subject to the provisions of chapter 80.16 RCW must file a report summarizing all transactions, except for transactions provided at tariff rates, that occurred between the company and its affiliated interests, and the company and its subsidiaries, during the period January 1 through December 31 of the preceding year.

(2) The information required in this subsection must be for total company, total state of Washington, and Washington intrastate. The report must include a corporate organization chart of the company and its affiliated interests and subsidiaries.

(3) When total company transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total company transactions with an affiliated

interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the company must provide:

(a) A balance sheet and income statement for such affiliated interest;

(b) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and

(g) A list of all common officers and directors between the company and each such affiliated interest or subsidiary, along with their titles in each organization.

(3) The report required in this section supersedes the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(4) The company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-120-375 (Affiliated interests—Contracts or arrangements).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-395, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-399 Access charge and universal service reporting.** (1) **Intrastate mechanism reporting.**

(a) Until legislation creating a new universal service fund is adopted and effective and commission rules to implement the legislation are adopted and effective, each Class A company in the state of Washington and the Washington Exchange Carrier Association, must provide annually:

(i) The actual demand units for the previous calendar year for each switched access tariff rate element (or category of switched access tariff rate elements, both originating and terminating) it has on file with the commission.

(ii) Primary toll carriers (PTCs) must file, in addition to the information required in (a)(i) of this subsection, the annual imputed demand units for the previous calendar year that the company would have had to purchase from itself if it had been an unaffiliated toll carrier using feature group D switched access service (including intraLATA and interLATA, both originating and terminating demand units). For purposes of this subsection, a PTC means a local exchange company offering interexchange service(s) to retail customers using feature group C switched access service for the origination or termination of any such service(s).

(b) The report containing the information required in (a) of this subsection must be filed by July 1 of each year.



(c) Each company providing information required by this section must include complete work papers and sufficient data for the commission to review the accuracy of the report.

(2) **Annual state certification requirements for interstate (federal) mechanism.** Each eligible telecommunications carrier (ETC) in Washington receiving federal high-cost universal service support funds must provide the following to the commission not later than August 31 of each year:

(a) A certification that, during the calendar year preceding the year in which certification is made, the ETC provided the supported services required by 47 U.S.C. § 214(e) and described in the commission order granting it ETC status;

(b) A certification that, during the calendar year preceding the year in which certification is made, the ETC advertised the availability of supported services and the charges for them as required by 47 U.S.C. § 214(e) and as described in the commission order granting it ETC status;

(c) A certification that funds received by it from the federal high-cost universal service support fund will be used only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended;

(d) The amount of all federal high-cost universal service fund support received for the calendar year preceding the year in which the filing must be made (this includes, but is not limited to, high cost loop support or "HCL," local switching support or "LSS," long term support or "LTS," interstate access support or "IAS," and interstate common line support or "ICLS");

(e) The loop counts on which federal high-cost universal service support was based for support received during the calendar year preceding the year in which the filing must be made;

(f) The certifications required in (a) through (e) of this subsection must be made in the same manner as required by RCW 9A.72.085.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-399, filed 2/28/05, effective 3/31/05.]

**WAC 480-120-402 Safety.** The plant and all facilities of utilities must be constructed and installed in conformity with good engineering practice and comply with the minimum standards as set out in the National Electric Safety Code. Information about this standard regarding the version adopted and where to obtain it is set forth in WAC 480-120-999 (Adoption by reference). All instrumentalities and equipment must be installed and maintained with due consideration to the safety of the customers, employees and general public. Hazardous conditions endangering persons, property, or the continuity of service when found, reported or known to exist, must be expeditiously corrected.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-402, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-402, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-414 Emergency operation.** (1) Each company must maintain, revise, and provide to the commission the following:

(a) The titles and telephone numbers of the company's disaster services coordinator and alternates; and

(b) Upon request of the commission, the company's current plans for emergency operation, including current plans for recovery of service to governmental disaster recovery response agencies within the state of Washington.

(2) For coordination of disaster response and recovery operations, each company must maintain on file with the Washington state emergency management division the titles and telephone numbers of the managers of the company's:

(a) Local network operations center;

(b) Regional network operations center; or

(c) Emergency operations center.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-414, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-414, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-439 Service quality performance reports.** (1) **Class A companies.** Each Class A company must report monthly the information required in subsections (3), (4), and (6) through (10) of this section. Each company must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).

(2) **Class B companies.** Class B companies need not report to the commission as required by subsection (1) of this section. However, these companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with the service quality standards established by WAC 480-120-105 (Company performance standards for installation or activation of access lines), 480-120-112 (Company performance for orders for nonbasic services), 480-120-133 (Response time for calls to business office or repair center during regular business hours), 480-120-401 (Network performance standards), 480-120-411 (Network maintenance), and 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages).

(3) **Missed appointment report.** The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.

(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.

(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 (Company performance standards for installation or

activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services).

(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new appointment.

(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.

**(4) Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.

(a) The company must file a separate report each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

(b) The company must file a separate report each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.

(c) A company may exclude from the total number of orders taken and the total number of uncompleted orders for the month:

(i) Orders for which customer-provided special equipment is necessary;

(ii) When a later installation or activation is permitted under WAC 480-120-071 (Extension of service);

(iii) When a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or

(iv) When the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order.

(d) For calculation of the report of orders installed or activated within five business days in a month, a company may exclude from the total number of orders taken and from the total number of uncompleted orders for the month, orders that could not be installed or activated within five days in that month due to force majeure if the company supplies documentation of the effect of force majeure upon the order.

**(5) Major outages report.** Notwithstanding subsections (1) and (2) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

**(6) Summary trouble reports.** Each month companies must submit a report reflecting the standard established in WAC 480-120-438 (Trouble report standard). The report must include the number of reports by central office and the number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438. The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.

**(7) Switching report.** Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a) (Switches—Dial service), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

**(8) Interoffice, intercompany and interexchange trunk blocking report.** Each company that experiences trunk blocking in excess of the standard in WAC 480-120-401 (3) (Interoffice facilities) and (5) (Service to interexchange companies) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.

**(9) Repair report.**

(a) For service-interruption repairs subject to the requirements of WAC 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages), each company must report the number of service interruptions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the

repair interval standard as provided for in WAC 480-120-440.

(b) For service-impairment repairs subject to the requirements of WAC 480-120-440, each company must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.

(10) **Business office and repair answering system reports.** When requested, each company must report compliance with the standard required in WAC 480-120-133 (Response time for calls to business office or repair center during regular business hours). If requested, each company must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.

(11) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.

(12) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:

(a) The company cannot reasonably provide the measurement or reports as required;

(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and

(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.

(13) Subsection (12) of this section does not preclude application for an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-439, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-120-439, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-439, filed 12/12/02, effective 7/1/03.]

**WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.** "Private branch exchange (PBX)" means customer premises equipment installed on the customer's premises that functions as a switch, permitting the customer to receive incoming calls, to dial any other telephone on the premises, to access a tie trunk leading to another PBX or to access an outside trunk to the public switched telephone network.

"Data base management system (DBMS)" means a data base used by local exchange companies (LECs) to provide automatic location information (ALI) to public safety answering points (PSAPs).

"Emergency location identification number (ELIN)" means a telephone number that is used to route the call to a PSAP and is used to retrieve the automatic location information (ALI) for a PSAP.

"Emergency response location (ERL)" means a location to which a 911 emergency response team may be dispatched.

(1) Local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services including:

(a) For single line service, the ability for customers to dial 911 with the call and caller's ELIN transmitted to the E911 selective router serving the location associated with the ERL for that line;

(b) For multiline customers, the ability for customers to dial 911 with common signal protocols available which permit the call and caller's ELIN to be transmitted to the E911 selective router serving the location associated with the ERL for that line;

(c) For pay phones served by pay phone access lines (PALs) the ability for customers to dial 911 with the call and the ELIN transmitted to the E911 selective router serving the location of the ERL for that line. The ELIN must be that of the pay phone.

(2)(a) LECs that provide or make available E911 data base management, whether directly or through contract, must provide to all PBX owners or their agents (including LECs) a simple, internet-based method to maintain customer records in the E911 data base, and the LEC may provide an option of a secure dial up access method for the PBX owner or agent to maintain customer records in the E911 data base. The method must use a generally accepted national format for customer record information.

(b) LECs that provide or make available E911 data base management, whether directly or through contract, must provide or make available to all other LECs a simple, internet-based method to maintain customer records in the E911 data base for their non-PBX customers, and the LEC may provide an option of a secure dial up access or direct data link method for LECs to maintain customer records in the E911 data base. The LEC may offer methods for maintaining station location information that are not internet-based in addition to the required internet-based method.

(c) LECs that provide pay phone access lines must maintain customer record information, including ELIN and ERL information, for those access lines using a method required by (b) of this subsection. The LEC must forward the records to the data base manager within one business day of a record's posting to the company records system.

(d) For single line services, PBX main station lines, and pay phone lines, LECs must transmit updated location information records to the data base management system (DBMS) within one business day of those records being posted to the company record system.

The LEC must correct records that do not post to the DBMS because of address errors within two working days. If modifications are necessary to the audit tables of the master street address guide, the LEC must resubmit the record within one business day of notification that the master street address guide has been updated.

(e) The LEC or its agent administering the data base must resolve E911 data base errors and inquiries, including

selective routing errors, reported by county E911 data base coordinators or PSAPs within five working days of receipt.

(3) LECs choosing to provide E911 services including selective routing, data base management and transmission of the call to a PSAP must file with the commission tariffs and supporting cost studies or price lists, whichever applies, that specify the charges and terms for E911 services.

(4)(a) The LEC must permit PBX customers who choose to maintain their own E911 data base or contract that maintenance to a third party, if the customer maintains the data in a generally accepted national format for customer record information.

(b) PBX customers who choose to not use LEC data base management may transmit, or have a third-party transmit, customer record information to their LEC's national data service gateway at no additional charge.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-450, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-450, filed 12/12/02, effective 7/1/03.]

#### **WAC 480-120-540 Terminating access charges.**

(1)(a) Except for any universal service rate allowed pursuant to subsection (1)(b) of this section, the rates charged by a local exchange company for terminating access service offered by tariff must not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access must not exceed the cost of the terminating access service being provided.

(b) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such costs as an additional, explicit universal service rate element applied to terminating access service.

(2) The rates charged by a local exchange company for terminating access service offered by price list must not exceed the rates charged by the incumbent local exchange company for terminating access service in the comparable geographic area. For purposes of this subsection, the rates charged by the incumbent local exchange company include any universal service rate charged pursuant to subsection (1)(b) of this section.

(3) The cost of the terminating access must be determined based on the total service long-run incremental cost of terminating access service plus a reasonable contribution to common or overhead costs. Local loop costs are considered "shared" or "joint" costs and must not be included in the cost of terminating access. However, nothing in this rule prohibits recovery of local loop costs through originating access charges (including switched, special, and dedicated as defined in subsection (4)(a) of this section).

(4) Definitions.

(a) "Access charge" means a rate charged by a local exchange company to an interexchange company for the origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination,

transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

(b) "Terminating access service" includes transport only to the extent that the transport service is bundled to the end office or tandem switching service. Dedicated transport unbundled from switching services is not subject to subsection (1) of this section.

(c) "Bill and keep" (also known as "mutual traffic exchange" or "payment in kind") is a compensation mechanism where traffic is exchanged among companies on a reciprocal basis. Each company terminates the traffic originating from other companies in exchange for the right to terminate its traffic on that company's network.

(5) The requirement of subsection (1) of this section that any terminating rate be based on cost must not apply to any local exchange company that is a small business, or to any local exchange company that is competitively classified, if it concurs in the terminating rate of any local exchange company that has filed a terminating rate that complies with the requirements of subsection (1) of this section. For the purposes of this subsection, "small business" has the same meaning as it does in RCW 19.85.020.

(6) Any local exchange company that is required to lower its terminating access rates to comply with this rule may file tariffs or price lists (as appropriate) to increase or restructure its originating access charges. The commission will approve the revision as long as it is consistent with this rule, in the public interest and the net effect is not an increase in revenues.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-540, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040, 80.04.160 and 80.36.140. 98-19-147 (Order R-450, Docket No. UT-970325), § 480-120-540, filed 9/23/98, effective 12/21/98.]

**WAC 480-120-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services - Specifications*" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect on March 22, 1984, and reaffirmed September 16, 1992.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the version in effect on January 1, 2002.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 CFR, is published by the United States Government Printing Office, except sections 64.2003 through 64.2009.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports).

(c) Copies of Title 47 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(5) Sections 64.2003 through 64.2009 of **Title 47 of the Code of Federal Regulations**, cited as 47 CFR §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).

(c) Copies of Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-120-999, filed 10/10/05, effective 11/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-999, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-999, filed 12/12/02, effective 7/1/03.]

## Chapter 480-121 WAC

### REGISTRATION, COMPETITIVE CLASSIFICATION AND PRICE LISTS OF TELECOMMUNICATIONS COMPANIES

#### WAC

480-121-063

Regulatory requirements that may be waived for competitively classified telecommunications companies.

#### WAC 480-121-063 Regulatory requirements that may be waived for competitively classified telecommuni-

**cations companies.** (1) The following regulatory requirements are waived for competitively classified companies:

(a) RCW 80.04.300 (Budgets to be filed by companies—Supplementary budgets);

(b) RCW 80.04.310 (Commission's control over expenditures);

(c) RCW 80.04.320 (Budget rules);

(d) RCW 80.04.330 (Effect of unauthorized expenditure—Emergencies);

(e) RCW 80.04.360 (Earnings in excess of reasonable rate—Consideration in fixing rates);

(f) RCW 80.04.460 (Investigation of accidents);

(g) RCW 80.04.520 (Approval of lease of utility facilities);

(h) RCW 80.36.100 (Tariff schedules to be filed and open to public);

(i) RCW 80.36.110 (Tariff changes—Statutory notice—Exception);

(j) Chapter 80.08 RCW (Securities) (except RCW 80.08.140, State not obligated);

(k) Chapter 80.12 RCW (Transfers of property);

(l) Chapter 80.16 RCW (Affiliated interests);

(m) WAC 480-80-101 Tariff requirements through WAC 480-80-143 Special contracts for gas, electric, and water companies;

(n) Chapter 480-140 WAC (Commission general—Budgets);

(o) Chapter 480-143 WAC (Commission general—Transfers of property);

(p) WAC 480-120-102 (Service offered);

(q) WAC 480-120-339 (Streamlined filing requirements for Class B telecommunications company rate increases);

(r) WAC 480-120-311 (Access charge and universal service reporting);

(s) WAC 480-120-344 (Expenditures for political or legislative activities);

(t) WAC 480-120-352 (Washington Exchange Carrier Association (WECA));

(u) WAC 480-120-369 (Transferring cash or assuming obligation);

(v) WAC 480-120-375 (Affiliated interests—Contracts or arrangements);

(w) WAC 480-120-395 (Affiliated interest and subsidiary transactions report);

(x) WAC 480-120-389 (Securities report); and

(y) WAC 480-120-395 (Affiliated interest and subsidiary transactions report).

This rule supersedes all waivers of regulatory requirements for competitively classified companies granted by the commission at the time of a company's competitive classification. However, subsequent to the adoption of this rule, the commission may revoke the waiver of any regulatory requirement set forth in (a) through (y) of this subsection or may waive any regulatory requirement not included in (a) through (y) of this subsection.

(2) The commission may by order revoke waivers of regulatory requirements if it determines that revocation is necessary to protect the public interest.

(3) In addition, the commission may waive regulatory requirements for telecommunications companies that it has classified as competitive if it determines that competition

with the regulatory waiver will serve the same purposes as public interest regulation.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 81.04.160. 05-17-026 (Docket No. A-021178 and TO-030288, General Order No. R-522), § 480-121-063, filed 8/5/05, effective 9/5/05. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-121-063, filed 2/28/05, effective 3/31/05; 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-121-063, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 02-11-080 (General Order No. R-499, Docket No. UT-991922), § 480-121-063, filed 5/14/02, effective 6/17/02; 01-09-002 (Docket No. U-991301, General Order No. R-481), § 480-121-063, filed 4/4/01, effective 5/5/01.]

### Chapter 480-122 WAC WASHINGTON TELEPHONE ASSISTANCE PROGRAM

#### WAC

480-122-020 Washington telephone assistance program rate.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

480-122-060 Telephone assistance excise tax. [Statutory Authority: RCW 80.01.040 and 80.04.160. 02-03-017 (Docket No. UT-003074, General Order No. R-492), § 480-122-060, filed 1/4/02, effective 2/28/02. Statutory Authority: RCW 80.01.040, 92-20-031 (Docket No. UT 040015, General Order No. R-516) (Order R-377, Docket No. UT-920696), § 480-122-060, filed 9/28/92, effective 10/29/92; 90-19-020 (Order R-328, Docket No. UT-900462), § 480-122-060, filed 9/11/90, effective 10/12/90; 89-11-020 (Order R-300, Docket No. U-89-2754-R), § 480-122-060, filed 5/11/89; 87-20-043 (Order R-277, Cause No. U-87-1102-R), § 480-122-060, filed 10/1/87.] Repealed by 05-03-031 (Docket No. UT 040015, General Order No. R-516), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 80.01.040 and 80.04.160.

**WAC 480-122-020 Washington telephone assistance program rate.** The commission will set by order the telephone assistance rate to be paid by program participants for local service. Every eligible telecommunications company (ETC) must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-122-020, filed 1/10/05, effective 2/10/05; 02-03-017 (Docket No. UT-003074, General Order No. R-492), § 480-122-020, filed 1/4/02, effective 2/28/02. Statutory Authority: RCW 80.01.040. 98-18-106 (Order R-449, Docket No. UT-971664), § 480-122-020, filed 9/2/98, effective 10/3/98; 90-19-020 (Order R-328, Docket No. UT-900462), § 480-122-020, filed 9/11/90, effective 10/12/90; 87-20-043 (Order R-277, Cause No. U-87-1102-R), § 480-122-020, filed 10/1/87.]

### Chapter 480-140 WAC COMMISSION GENERAL—BUDGETS

#### WAC

480-140-020 Who must file.

**WAC 480-140-020 Who must file.** The following public service companies with annual gross operating revenues exceeding two hundred fifty thousand dollars must file budgets with the commission:

- (1) Gas companies; and
- (2) Electrical companies.

[Statutory Authority: RCW 80.01.040(4), 80.04.160, and 80.40.320. 06-01-011 (Docket Nos. UT-051261 and UW-051287, General Order No. R-525), § 480-140-020, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 80.04.160, 80.01.040 and 80.04.300 through 80.04.330. 99-23-065 (Order No. R-466, Docket No. A-990298), § 480-140-020, filed 11/15/99, effective 12/16/99. Statutory Authority: RCW 80.01.040. 92-02-083 (Order R-363, Docket No. U-911075), § 480-140-020, filed 12/31/91, effective 1/31/92; 91-08-026 (Order R-341, Docket No. U-901099), § 480-140-020, filed 3/28/91, effective 4/28/91. Statutory Authority: RCW 80.01.040 and 80.04.320. 87-01-001 (Order R-269, Cause No. U-86-121), § 480-140-020, filed 12/5/86; Order R-5, § 480-140-020, filed 6/6/69, effective 10/9/69.]

## Title 495B WAC BELLINGHAM TECHNICAL COLLEGE

### Chapters

#### 495B-116

#### Parking and traffic.

### Chapter 495B-116 WAC PARKING AND TRAFFIC

#### WAC

495B-116-030	Definitions.
495B-116-040	Authorization for issuance of permits.
495B-116-050	Vehicle parking permits.
495B-116-060	Visitor permits.
495B-116-080	Display of permits.
495B-116-090	Transfer of permits.
495B-116-120	Appeal of permit revocation or refusal.
495B-116-150	Violation of parking and traffic rules.
495B-116-160	Issuance of traffic tickets or summons.
495B-116-170	Fines and penalties.
495B-116-210	Designation of parking.

**WAC 495B-116-030 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "Campus" means all lands and buildings devoted to, operated by, or maintained by Bellingham Technical College.

(3) "College" means Bellingham Technical College.

(4) "Chief business officer" means the vice-president of administrative services of Bellingham Technical College.

(5) "Employee" means an individual appointed to the faculty, staff, or administration of the college.

(6) "Guests or visitors" mean persons who come upon the campus as guests or persons who lawfully visit the campus.

(7) "Continuing permits" mean permits issued to full-time employees for an indefinite period of time.

(8) "Annual permits" mean permits that are valid from the date of issue until the first day of the following fall quarter.

(9) "Temporary permits" mean permits that are valid for a specific period designated on the permit.

(10) "Vehicle" means an automobile, truck, motor-driven cycle, scooter, or any vehicle otherwise powered.

(11) "Full-time student" means a person who is enrolled on campus for six hours per day or more at the college.

(12) "Part-time student" means a person who is enrolled on campus for less than six hours per day at the college.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-030, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-030, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-040 Authorization for issuance of permits.** (1) Parking permits may be issued to students, employees, and guests upon the following conditions:

(a) When the vehicle is properly registered with the college;

(b) When a permanent or special parking permit is necessary to enhance the business or operation of the college.

(2) Only one vehicle registered to an individual under permit is permitted to park on campus at any one time.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-040, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-040, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-050 Vehicle parking permits.** (1) All part-time and full-time employees of the college shall obtain and display a currently valid parking permit on all vehicles parked or left standing unattended upon the college campus for day classes, in accordance with WAC 495B-116-040.

(2) With the exception of visitor, as defined in WAC 495B-116-060, all persons parking on the campus shall secure and display a currently valid parking permit.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-050, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-050, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-060 Visitor permits.** All guests or visitors (including salespersons and maintenance or service personnel) will park in appropriate parking areas after signing in at the college information desk or designated location.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-060, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-060, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-080 Display of permits.** The parking permit issued by the college must be visible within the vehicle for which the permit is issued. Motorcycle permits must be affixed in a conspicuous place.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-080, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-080, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-090 Transfer of permits.** Parking permits are assigned to specifically registered vehicles. If a vehicle is sold or traded, the new vehicle must be registered with the college at no additional cost to the permit holder.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-090, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-090, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-120 Appeal of permit revocation or refusal.** When a parking permit has been revoked under

WAC 495B-116-100 or has been refused in accordance with WAC 495B-116-110 or when a fine or penalty has been levied against a violator of this chapter, that action by the chief business office or a designee may be appealed in accordance with WAC 495B-116-180.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-120, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-120, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-150 Violation of parking and traffic rules.** (1) Operators of illegally operated or parked vehicles shall be warned or cited through an appropriate means that they are in violation of this chapter. All fines are payable at the cashier's office.

(2) A vehicle may be impounded if, in the judgment of the chief business officer or college designee, such impoundment is warranted due to the fact that violations have been repeated as evidenced by appropriate documentation.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-150, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-150, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-160 Issuance of traffic tickets or summons.** (1) The college designee or chief business officer may issue a warning or citation for a violation of these regulations. The warning or citation must set forth the date, the approximate time, permit number, license information, and the nature of violation.

(2) The warning or citation may be served by attaching or affixing a copy in some prominent place outside the vehicle or by personally serving the operator.

[Statutory Authority: RCW 28B.50.130. 05-06-011, § 495B-116-160, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-160, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-170 Fines and penalties.** The college designee or chief business officer may impose the following fines and penalties for violation of this chapter:

(1) The college shall establish a schedule of fines. The college shall publish the schedule in the college's *Policy and Procedures* manual and on the traffic parking citation form.

(2) Fines will be assessed in accordance with the schedule for the following violations:

- (a) No valid permit displayed;
- (b) Visitor parking violations;
- (c) Occupying more than one parking space;
- (d) Occupying a space or area not designated for parking;
- (e) Handicapped parking violation;
- (f) Parking in an area not authorized by a permit;
- (g) Parking in reserved staff space without authorization;
- (h) Blocking or obstructing traffic (may be towed if creating a safety hazard);
- (i) Parking adjacent to a fire hydrant (may be towed if creating a safety hazard);
- (j) Parking in a fire lane (may be towed if creating a safety hazard);
- (k) Parking in a zone or area marked no parking;
- (l) Other violations of college parking traffic rules.

(3) At the discretion of the chief business officer or a designee, an accumulation of citations by a staff, administrator, or faculty member may be turned over to a private collection agency for the collection of past due fines. Other appropriate collection procedures may be initiated as deemed necessary.

(4) If a person fails or refuses to pay an uncontested fine that has been outstanding in excess of five days, the chief business officer or a designee may initiate the following actions:

(a) The person, if a student may not be able to obtain a transcript of credits until all fines are paid;

(b) The person, if a student may not receive a degree or certificate until all fines are paid;

(c) The person will not be able to register as a student for subsequent quarters until all fines are paid.

(5) Vehicles parking in a manner so as to obstruct traffic, including access to and from parking spaces and areas, may be subject to a fine and may be impounded if so designated by the chief business officer or college designee and taken to a place for storage selected by the college designee. The expenses of the impounding and storage are the responsibility of the registered owner or driver of the vehicle.

(6) Vehicles impounded by means of an immobilizing device shall be charged a service fee according to the current fee schedule.

(7) The college is not liable for loss or damage of any kind resulting from impounding and storage of vehicles.

(8) Persons may appeal the issuance of a citation according to WAC 495B-116-180.

[Statutory Authority: RCW 28B.50.130, 05-06-011, § 495B-116-170, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-170, filed 2/10/93, effective 3/13/93.]

**WAC 495B-116-210 Designation of parking.** The parking spaces available on campus may be allocated and designated by the chief business officer or college designee in such a manner as will best achieve the objectives of this chapter.

(1) Special provisions shall be made for physically disabled employees, visitors, students, or their designees. Physically disabled individuals using handicapped parking spaces must display in that vehicle a valid state-issued disabled parking permit or license plate.

(2) Spaces specifically designated as "visitor" are to be used only by visitors driving vehicles without continuing or annual permits. Visitors are to sign at the information desk or other designated location and are to park in visitor parking spaces.

(3) The chief business officer or college designee may designate parking spaces for special purposes as deemed necessary.

(4) Spaces specifically designated as carpool are to be used by those individuals having obtained a valid carpool permit.

[Statutory Authority: RCW 28B.50.130, 05-06-011, § 495B-116-210, filed 2/18/05, effective 3/21/05. Statutory Authority: RCW 28B.10.140, 42.30.075 and chapter 34.05 RCW. 93-05-018, § 495B-116-210, filed 2/10/93, effective 3/13/93.]